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Attorneys for Plaintiffs Aaron Braxton, Gia Gray,
Bryan Brown, Paul Martin, on behalf of
themselves and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON BRAXTON, GIA GRAY, BRYAN
BROWN AND PAUL MARTIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a Delaware
corporation; WELLS FARGO HOME
MORTGAGE, INC., a Delaware corporation;
WELLS FARGO & CO., a Delaware
corporation,

Case No. 3:22-cv-01748-JD
Honorable James Donato

**NOTICE OF LODGING THE *BRAXTON*
PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF OPPOSITION
TO THE MOTION FOR
APPOINTMENT OF INTERIM LEAD
COUNSEL FILED BY GUSTAFSON
GLUEK PLLC**

Date: October 20, 2022
Time: 10:00 a.m.
Location : Courtroom 11
United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

1 TO THE HONORABLE JUDGE JAMES DONATO, AND TO ALL PARTIES AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on September 9, 2022, pursuant to Rules 42(a)(2) and
4 23(g)(3) of the Federal Rules of Civil Procedure, Plaintiffs Aaron Braxton, et al.'s Request for
5 Judicial Notice in Support of Opposition to the Motion for Appointment of Interim Lead Counsel
6 filed by Gustafson Gluek PLLC was Filed in the case of *Elretha Perkins, et al. vs. Wells Fargo*
7 *Bank, N.A., Wells Fargo Home Mortgage, Inc.*, Northern District of California, Case No. 3:22-cv-
8 03455-JD.

9 A true and correct copy of the Request for Judicial Notice in Support of Opposition to the
10 Motion for Appointment of Interim Lead Counsel Filed by Gustafson Gluek PLLC is hereby
11 lodged with this Court as Exhibit A to this Notice of Lodging.

1 DATED: September 9, 2022

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24 DATED: September 9, 2022

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Jason Frank

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ATTORNEY ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Dennis S. Ellis
Dennis S. Ellis

EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON BRAXTON, GIA GRAY, BRYAN
BROWN AND PAUL MARTIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a Delaware
corporation; WELLS FARGO HOME
MORTGAGE, INC., a Delaware corporation;
WELLS FARGO & CO., a Delaware
corporation,

Defendants.

Case No. 3:22-cv-01748-JD
(Related to Case No. 3:22-cv-00990-JD)

Honorable James Donato

**THE BRAXTON PLAINTIFFS REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF OPPOSITION TO MOTION FOR
APPOINTMENT OF INTERIM LEAD
COUNSEL FILED BY GUSTAFSON
GLUEK PLLC**

Date: October 20, 2022
Time: 10:00 a.m.
Location : Courtroom 11
United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

1 A. Plaintiffs Aaron Braxton et. al.'s Motion for Appointment of Interim Lead Counsel
2 for a Putative Refinancing Class, filed on July 28, 2022 in the matter of *Braxton v. Wells Fargo*,
3 Case No. 4:22-cv-01748-JD, at Dkt. 45, a true and correct copy of which is attached hereto as
4 Exhibit A.

5 B. The Declaration of Dennis S. Ellis in support of Plaintiffs Aaron Braxton et. al.'s
6 Motion for Appointment of Interim Lead Counsel for a Putative Refinancing Class, filed on July
7 28, 2022 in the matter of *Braxton v. Wells Fargo*, Case No. 4:22-cv-01748-JD, at Dkt. 45-1, a true
8 and correct copy of which is attached hereto as Exhibit B.

9 C. The Declaration of Jason M. Frank in support of Plaintiffs Aaron Braxton et. al.'s
10 Motion for Appointment of Interim Lead Counsel for a Putative Refinancing Class, filed on July
11 28, 2022 in the matter of *Braxton v. Wells Fargo*, Case No. 4:22-cv-01748-JD, at Dkt. 45-2, a true
12 and correct copy of which is attached hereto as Exhibit C.

13 D. Plaintiffs Aaron Braxton et. al.'s Opposition to Wells Fargo Bank, N.A. and Wells
14 Fargo & Company's Motion to Consolidate, filed on August 26, 2022 in the matter of *Williams v.*
15 *Wells Fargo*, Case No. 3:22-cv-00990-JD, at Dkt. 70, a true and correct copy of which is attached
16 hereto as Exhibit D.

17 Rule 201 of the Federal Rules of Evidence authorizes a court to take judicial notice of a
18 fact that is not subject to reasonable dispute because the fact "is either

- 19 (1) generally known within the territorial jurisdiction of the trial court or
- 20 (2) capable of accurate and ready determination by resort to sources whose
- 21 accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

22 "A trial court may presume that public records are authentic and trustworthy." *Gilbrook v.*
23 *City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999). Courts therefore may take judicial notice
24 of information "made publicly available by government entities." *Daniels-Hall v. Natl. Educ.*
25 *Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010) (taking judicial notice of materials available on school
26 district's website); *see also, e.g., Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1033
27 (C.D. Cal. 2015) ("Under Rule 201, the court can take judicial notice of '[p]ublic records and
28 government documents available from reliable sources on the Internet,' such as websites run by

1 governmental agencies.”). The authenticity of each of the exhibits—all public records—cannot
2 reasonably be questioned. Judicial notice of these records is therefore appropriate.

3 “[C]ourt orders and filings are proper subjects of judicial notice.” *CarMax Auto*
4 *Superstores California LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1087 (C.D. Cal. 2015); *see also*,
5 *e.g.*, *Colony Cove Properties, LLC v. City of Carson*, 640 F.3d 948, 955 n.3 (9th Cir. 2011) (taking
6 judicial notice of petition for writ of mandamus and orders filed in Los Angeles Superior Court);
7 *Louis v. McCormick & Schmick Rest. Corp.*, 460 F. Supp. 2d 1153, 1156 n.4 (C.D. Cal. 2006)
8 (taking judicial notice of Los Angeles Superior Court order granting motion for judgment on the
9 pleadings). Each of the exhibits is also subject to judicial notice for this reason.

10 Finally, “[m]aterials from a proceeding in another tribunal are appropriate for judicial
11 notice.” *Biggs v. Terhune*, 334 F.3d 910, 916 n.3 (9th Cir. 2003), *overruled on other grounds by*
12 *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (taking judicial notice of transcript from
13 hearing before Board of Prison Terms). This includes taking judicial notice of transcripts from
14 prior court hearings. *E.g. Williams v. Yamaha Motor Corp., U.S.A.*, 106 F. Supp. 3d 1101, 1107
15 n.8 (C.D. Cal. 2015) (taking judicial notice of “transcript of the Court’s hearing on Defendant’s
16 previous motion to dismiss”); *Diaz v. Carlson*, 5 F. Supp. 2d 809, 814 n.4 (C.D. Cal. 1997) (“the
17 court takes judicial notice pursuant to Fed.R.Evid. 201 of the transcript of the administrative
18 hearing testimony and the California Supreme Court’s order denying plaintiff’s petition for
19 review”). Judicial notice of the attached exhibits is therefore proper for this reason too.

20 Accordingly, for the foregoing reasons, this Court should take judicial notice of Exhibits A
21 through D.

1 DATED: September 9, 2022

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1 DATED: September 9, 2022

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ATTORNEY ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Dennis S. Ellis

EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON BRAXTON, GIA GRAY,
BRYAN BROWN AND PAUL
MARTIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a
Delaware corporation; WELLS FARGO
HOME MORTGAGE, INC., a
Delaware corporation; WELLS FARGO
& CO., a Delaware corporation,

Case No. 4:22-cv-01748-JD

Honorable James Donato

**PLAINTIFFS AARON BRAXTON,
ET AL.'S MOTION FOR
APPOINTMENT OF INTERIM
COUNSEL FOR A PUTATIVE
REFINANCING CLASS**

Date: September 1, 2022

Time: 10:00 a.m.

Location : Courtroom 11
United States Courthouse,
450 Golden Avenue
San Francisco, CA

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on September 1, 2022, at 10:00 a.m. in Courtroom 11, 19th Floor of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, California 94102, Plaintiffs Aaron Braxton, Gia Gray, Bryan Brown, Paul Martin (“Plaintiffs”), will move the Court for appointment of interim counsel for a putative class consisting of Black homeowners who submitted refinancing applications to Wells Fargo and were allegedly discriminated against by Wells Fargo as a result of their race (the “Putative Refinancing Class”).

Pursuant to Rules 42(a)(2) and 23(g)(3) of the Federal Rules of Civil Procedure, Plaintiffs move for the appointment of Dennis S. Ellis of Ellis George Cipollone O’Brien Annaguey, LLP (“EGC”) and Jason M. Frank of Frank Sims & Stolper, LLP (“FSS”) to serve as interim counsel on behalf of the Putative Refinancing Class

Plaintiffs’ motion is based on this notice, the memorandum of points and authorities that follows, the pleadings on file herein, the accompanying Declarations of Dennis S. Ellis and Jason M. Frank, the proposed order, and such other matters as the Court may consider.

1 DATED: July 28, 2022

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1 DATED: July 28, 2022

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STATEMENT OF ISSUES TO BE DECIDED

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2 1. Should the Court appoint Dennis S. Ellis of EGC and Jason M. Frank
3 of FSS as interim counsel for the Putative Refinancing Class pursuant to Federal
4 Rule of Civil Procedure 23(g)?
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should appoint Dennis S. Ellis of Ellis George Cipollone O’Brien Annaguey LLP (“EGC”) and Jason M. Frank of Frank, Sims & Stolper LLP (“FSS”) (collectively the “*Braxton Firms*”) as interim counsel for a putative class consisting of Black homeowners who submitted refinancing applications to Wells Fargo and were allegedly discriminated against by Wells Fargo as a result of their race (the “Putative Refinancing Class”). The *Braxton Firms* were the first to file on behalf of a Putative Refinancing Class, have performed an extensive investigation related to that specific putative class, and seek to be appointed interim counsel solely on behalf of that specific putative class. This is evidenced by paragraph 146 of the First Amended Complaint (“FAC”) filed in this action. The *Braxton* firms do *not* seek to be appointed interim counsel for prospective borrowers who were allegedly discriminated against outside the refinancing process (*e.g.*, in the home loan origination process, where prospective buyers seek purchase money loans), nor do they seek to represent non-Black homeowners allegedly discriminated against on grounds of race (*e.g.*, Hispanic or Latino homeowners).¹

Appointment of interim counsel for the Putative Refinancing Class is consistent with this Court’s prior order denying Wells Fargo’s motion to dismiss this refinance-only *Braxton* action based on the related *Williams* action, which seeks relief on behalf of a significantly broader putative class of Black Americans who applied for, received, or maintained credit from Wells Fargo related to residential

¹ See *Williams v. Wells Fargo Bank, N.A.*, Case No. 22-cv-0090 (not limited to refinance applicants or time period); *Pope v. Wells Fargo Bank, N.A.*, Case No. 3:22-cv-01793-JD (not limited to Black homeowners); *Thomas v. Wells Fargo Bank, N.A.*, Case No. 3:22-cv-01931-CRB (not limited to Black homeowners); *Ebo v. Wells Fargo Bank, N.A.*, Case No. 22-cv-02535-SK (not limited to refinance applicants or time period); *Perkins, et al. v. Wells Fargo, N.A.*, case no. 22-cv-03455 (not limited to Black homeowners).

1 real estate. Dkt. 44. This Court held “[t]he cases are sufficiently similar for
 2 purposes of relation under the District[’]s local rules, but not so similar that *Braxton*
 3 is subsumed in *Williams*.” *Id.* Appointment of interim counsel is also necessary
 4 because the Putative Refinancing Class will benefit from having independent and
 5 specific counsel appointed to prosecute the litigation on their behalf and pursuing
 6 solely their interests, just as loan origination plaintiffs or non-Black minority
 7 borrowers will benefit from having their own independent and specific counsel
 8 pursuing solely their interests. Appointing interim counsel will best position the
 9 Putative Refinancing Class to obtain class certification and avoid they delay the that
 10 Class will likely suffer if they are lumped into broader proceedings related to
 11 differently-situated borrowers.

12 The *Braxton* Firms are uniquely positioned and qualified to act as interim
 13 counsel representing the interests of the Putative Refinancing Class. They have
 14 invested and continue to invest significant time and resources solely on behalf of the
 15 Putative Refinancing Class. Their work has included interviewing dozens of
 16 confidential informants with knowledge of Wells Fargo’s refinance operations;
 17 developing an initial understanding of Wells Fargo’s underwriting algorithm and
 18 identifying and investigating the algorithm’s differences based on the type of loan,
 19 specifically loan origination (purchase money loans) versus refinance; consulting
 20 with experts with domain expertise in algorithmic modeling and discriminatory
 21 biases associated with artificial intelligence and machine learning; analyzing Wells
 22 Fargo’s COVID-19 era algorithmic overlays; examining Wells Fargo’s appraisal
 23 process and its discriminatory impact on the Putative Refinancing Class; and
 24 interviewing members of the Putative Refinancing Class.

25 The *Braxton* Firms also bring a blend of experience that will maximize the
 26 odds of a successful resolution for the Putative Refinancing Class. The *Braxton*
 27 Firms consist almost exclusively of former “big firm” lawyers who have recovered
 28 well over \$1 billion on behalf of their plaintiff clients in class action and other

1 complex litigation, including recent class action litigation against Wells Fargo in the
 2 Central District of California in which Wells Fargo was represented by the same
 3 lawyers representing it here.

4 But the *Braxton* Firms' experience is not limited to prosecuting class actions.
 5 The *Braxton* Firms also have substantial experience defending class actions.
 6 Messrs. Ellis and Frank are both former equity partners at Paul Hastings LLP, where
 7 Mr. Ellis served as the Global Chair of the firm's Complex Litigation Practice for
 8 more than a decade and Mr. Frank served as one of the leaders of the firm's global
 9 class action team. This experience in having prosecuted *and* defended class actions
 10 will allow the *Braxton* Firms to blend their plaintiff-side class action experience
 11 with their knowledge of the "defense playbook" and provide the best possible
 12 representation of the Putative Refinancing Class.²

13 Accordingly, the *Braxton* Plaintiffs and their counsel request that this Motion
 14 be granted.

15 **II. RELEVANT PROCEDURAL BACKGROUND**

16 On March 18, 2022, Plaintiff Aaron Braxton and the *Braxton* Firms filed the
 17 first putative class action against Wells Fargo on behalf of Black homeowners who
 18 had submitted refinance applications to Wells Fargo and were harmed by Wells
 19 Fargo's alleged race-based discrimination. Dkt. 1. Since then, the *Braxton*
 20 Plaintiffs have filed their FAC. Dkt. 14. The FAC provides a detailed account of
 21 Wells Fargo's COVID-19 era refinancing application process and its increased
 22 reliance on algorithms and Wells Fargo's CORE automated underwriting system.
 23 *Id.* at ¶¶ 70-78. The FAC alleges that Wells Fargo's automated underwriting system
 24 was increasingly infected with explicit and implicit racial signals (so-called
 25 "overlays") that had, as their proximate and likely result, the disparate impact
 26

27 ² The *Braxton* Firms are not suggesting that alternative counsel are not well
 28 qualified. The *Braxton* Firms, however, submit that their blend of experience
 focused exclusively on the Putative Refinancing Class will provide the best possible
 representation for that Class here.

1 reflected in the statistical analyses identified in the FAC. *Id.* at ¶¶ 79-91. The FAC
 2 also draws on confidential informants to describe Wells Fargo’s failure to control
 3 for discriminatory practices. *Id.* at ¶¶ 82, 91, 101 103-05.

4 In addition to this *Braxton* action, five additional putative class actions are
 5 pending in this District in which the plaintiff seeks to represent Black homeowners
 6 allegedly discriminated against by Wells Fargo. The cases are:

7 • *Williams v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-0090-JD: As
 8 originally filed on February 17, 2022, the plaintiffs in *Williams* sought to represent a
 9 putative class of African Americans who applied for credit related to residential real
 10 estate and who were subjected to discrimination by Defendants due to their race.
 11 Declaration of Dennis S. Ellis (“Ellis Decl.”), Ex. C, ¶ 19. The original *Williams*
 12 Complaint did not include allegations related to discrimination in the refinancing
 13 process; allegations related to refinancing were added in an amended complaint filed
 14 after the *Braxton* action was filed. Compare Ellis Decl., Ex. A with Ex. D. The
 15 putative class in the operative amended *Williams* complaint is not limited to
 16 homeowners seeking to refinance. This Court related the *Williams* and *Braxton*
 17 actions on June 9, 2022, but denied Wells Fargo’s motion to dismiss *Braxton* on
 18 grounds of the pending *Williams* action, noting

19 [t]he *Williams* action involves a proposed class of African
 20 American applicants who applied for, received, or
 21 maintained credit from Wells Fargo related to residential
 22 real estate, while the *Braxton* action involves a proposed
 23 class of African American homeowners who submitted
 applications to refinance their home mortgages. The cases
 are sufficiently similar for purposes of relation under the
 District’s local rules, but not so similar that *Braxton* is
 subsumed in *Williams*.

24 Dkts. 37, 44.

25 • *Pope v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-01793-JD: Filed on
 26 March 21, 2022 and then amended on March 25, 2022— *i.e.*, after the *Braxton* action
 27 – the plaintiff in *Pope* seeks to represent all minority borrowers who were allegedly
 28 discriminated against by Wells Fargo in the refinance process. Ellis Decl., Ex. E, ¶

34. In other words, although the *Pope* action is limited to refinancing, it extends to all minority borrowers, not just Black borrowers.

- *Thomas v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-01931-CRB: The *Thomas* action was filed on March 26, 2022, after the *Braxton* action. Ellis Decl., Ex. F. The *Thomas* action was filed by the same lawyers and law firms as the *Pope* action. The complaint in *Thomas* is word-for-word identical to the complaint in *Pope*, other than differing allegations related to the named plaintiffs in the two cases and grammatical edits related thereto. Compare Ellis Decl., Ex. E with Ex. F. Thus, although the *Thomas* action is limited to refinancing, it extends to all minority borrowers, not just Black borrowers. The *Thomas* action is currently pending before Judge Breyer in this District and has not been related to any other cases in this District. To the best of the *Braxton* Plaintiffs' knowledge, the *Thomas* complaint has not been served on Wells Fargo. Ellis Decl., ¶ 4.c.

- *Ebo v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-02535-SK: After originally filing suit on April 5, 2022, in the Eastern District of New York³, the *Ebo* action was filed in the Northern District of California on April 26, 2022, after the *Braxton* action. Ellis Decl., Ex. G. The *Ebo* proposed class is limited to Black borrowers, but extends to all types of loans related to residential real property. *Id.*, Ex. G at ¶ 50.

- *Perkins, et al. v. Wells Fargo, N.A.*, case no. 3:22-cv-03455-CRB: The *Perkins* action was filed on June 10, 2022 and seeks to represent a putative class consisting of all racial minorities who submitted, or attempted to submit, an application to finance *or* refinance their home mortgage. Ellis Decl., Ex. H at ¶ 56. In other words, *Perkins* is not limited to refinancing applicants or limited to Black borrowers.

³ The matter was voluntarily dismissed by Plaintiffs on April 29, 2022.

As of the filing of this motion, this Court has related *Braxton*, *Pope*, *Ebo*, and *Perkins* to the *Williams* action, such that all five actions are pending before this Court. Ellis Decl., at ¶ 5. The *Braxton* Firms also understand that, upon being served, Wells Fargo intends to seek relation of the *Thomas* case. *Id.*

III. LEGAL STANDARD

“The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). This rule “authorizes [a] court to designate interim counsel during the pre-certification period if necessary to protect the interests of the putative class.” Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment. It recognizes that “it will usually be important for an attorney to take action to prepare for the certification decision” and thus that designation of interim counsel may be necessary due to “rivalry or uncertainty.” *Id.*; *Azpeitia v. Tesoro Ref. & Mktg. Co. LLC*, No. 17-CV-00123-JST, 2017 WL 4071368, at *2 (N.D. Cal. Sept. 14, 2017) (stating that this rule “authorizes [a] court to designate interim counsel during the pre-certification period if necessary to protect the interests of the putative class”). Doing so “clarifies responsibility for protecting the interests of the class during precertification activities.” Manual for Complex Litigation (Fourth) § 21.11 (2004).

“Although Rule 23(g)(3) does not provide a standard for appointment of interim counsel, courts typically look to the factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A).” *In re Seagate Tech. LLC Litig.*, No. 16-CV-00523-RMW, 2016 WL 3401989, at *2 (N.D. Cal. June 21, 2016). These are “(1) the work counsel has done in identifying or investigating the potential claims in the action; (2) counsel’s experience in handling class actions, complex litigation, and the types of claim asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). “But these considerations are not exclusive.” Wright & Miller, *Appointment of Class Counsel*, 7B Fed. Prac. &

1 Proc. Civ. § 1802.3 (3d ed.) The Court also “may consider any other matter
 2 pertinent to counsel’s ability to fairly and adequately represent the interests of the
 3 class.” Fed. R. Civ. P. 23(g)(2).

4 **IV. ARGUMENT**

5 **A. SELECTING INTERIM COUNSEL AT THIS TIME IS NECESSARY AND** 6 **APPROPRIATE TO PROTECT THE INTERESTS OF THE PUTATIVE** 7 **REFINANCING CLASS**

8 Appointing interim counsel here pursuant to Rule 23(g) is necessary and
 9 appropriate to protect the Putative Refinancing Class. That is the case for at least
 10 two reasons.

11 *First*, the members of the Putative Refinancing Class will be prejudiced if
 12 they are lumped in with a broader class, including loan origination applicants who
 13 applied for purchase money loans and/or non-Black applicants. The Potential
 14 Refinancing Class is, simply put, differently situated than purchase money loan
 15 customers. For example, all members of the Putative Refinancing Class were
 16 already deemed sufficiently creditworthy to obtain a home loan, and thus unlike
 17 classes including prospective homeowners seeking a purchase money loan. This
 18 distinction will require separate discovery for a purchase loan class as compared to a
 19 refinancing class. Further, purchase money loans are non-recourse loans, whereas
 20 refinanced home loans are not. Also, the damages model for the Putative
 21 Refinancing Class differs from that for consumers who applied for purchase money
 22 loans. Thus, if the Putative Refinancing Class is lumped in with the loan origination
 23 plaintiffs, it will lead to delays as a result of unrelated discovery disputes unique to
 24 the loan origination plaintiffs and will materially and detrimentally affect the
 25 Putative Refinancing Class’s odds of obtaining class certification.

26 Likewise, Black refinance applicants are differently situated than non-Black
 27 applicants because the algorithm and underwriting process allegedly discriminated
 28 against them on the basis of them being Black, not simply as a result of them being
 in a minority group. Wells Fargo may well have discriminated against other

1 minority groups, but that will require a distinct and different analysis than the one to
 2 be undertaken on behalf of Black refinance applicants. Given these differences,
 3 separate and independent counsel for the Putative Refinancing Class is necessary
 4 and appropriate, whoever that counsel may be.

5 *Second*, appointment of interim counsel for the Putative Refinancing Class is
 6 appropriate because a rivalry has emerged between firms attempting to represent
 7 members of that putative Class. For example, counsel in the related *Williams* action
 8 previously took the position that “the *Braxton* case could be stayed or dismissed.”
 9 *Williams* Dkt. 40 at p. 2. Thus, “[i]n the present case, appointing interim class
 10 counsel is appropriate... two teams of attorneys are competing to represent the
 11 putative class.” *Smallman v. MGM Resorts Int’l*, 2021 WL 326135, at *2 (D. Nev.
 12 Feb. 1, 2021) (citing *Parrish v. Nat’l Football League Players Inc.*, No. C 07-00943
 13 WHA, 2007 WL 1624601, at *9 (N.D. Cal. June 4, 2007) (stating that interim
 14 counsel may be appointed where there is “a gaggle of law firms jockeying to be
 15 appointed class counsel”); *see also Tolmasoff v. Gen. Motors, LLC*, No. 16-11747,
 16 2016 WL 3548219, at *9 (E.D. Mich. June 30, 2016) (stating that “interim counsel
 17 is particularly appropriate when a number of lawyers have filed related ‘copycat’
 18 actions” (citation omitted)).

19 **B. THE COURT SHOULD APPOINT THE *BRAXTON* FIRMS AS INTERIM**
 20 **COUNSEL**

21 **1. As the First to File a Refinance-Focused Complaint, the**
 22 ***Braxton* Firms Have Put In Significant Work Identifying**
 23 **And Investigating The Potential Claims Specific to the**
 24 **Putative Refinancing Class**

25 The *Braxton* Firms were the first to file⁴ a class action alleging that Black
 26 borrowers were discriminated against in *the home loan refinancing process*. As

27 ⁴ “Courts have held that the first-to-file factor may be considered an ‘objective tie-
 28 breaker’ in appointing lead counsel” in close cases. *In re Apple Inc. S’holder*
Derivative Litig., No. 19-CV-05153-YGR, 2020 WL 3507426, at *1, n.2 (N.D. Cal.
 June 29, 2020); *see also Robbins v. Phillips 66 Co.*, 2019 WL 13119275, at *3 (N.D.
 Cal. Aug. 8, 2019) (“The only factor that separates the two is that the [firm A] has

1 reflected by the comprehensive FAC filed in *Braxton*, the *Braxton* Firms have
 2 performed substantial work in building a case focusing on Wells Fargo’s specific set
 3 of policies and practices relating to refinance applications and its discriminatory
 4 impact on Black borrowers. In appointing interim lead counsel, courts evaluate
 5 “[t]he quality of pleadings [to help] determin[e] counsel’s ability and adequacy to
 6 represent the interests of the class.” *Case v. Merlin Ents. Grp. U.S. Holdings Inc.*,
 7 2021 WL 1195813, at *5 (S.D. Cal. Mar. 30, 2021); *see also Cadena v. Am. Honda*
 8 *Motor Co.*, 2020 WL 3107798, at *4 (C.D. Cal. June 9, 2020) (selecting as interim
 9 lead counsel the two firms that prepared the most “detailed complaints.”); *Potzner v.*
 10 *Tommie Copper Inc.*, 2016 WL 304746, at *1 (S.D.N.Y. Jan. 4, 2016) (“As reflected
 11 in the detailed 86–page complaint filed in the Lucero action, Faruqi and Marron
 12 have done more work than Cuneo and Lockridge to investigate and identify
 13 potential claims in this action. In addition to being more specifically pleaded, the
 14 Lucero complaint asserts a more comprehensive set of theories of liability than the
 15 Potzner complaint and is more factually developed.”).

16 In preparing its case against Wells Fargo, the *Braxton* Firms interviewed
 17 several confidential informants, which revealed (1) that the bank collects “key
 18 geographic, financial, and demographic data” and processes them in a CORE
 19 algorithm, (2) that Wells Fargo management got real-time data about how its
 20 policies were worsening racial disparities, and (3) that, rather than rectifying the
 21 problem, management pressured loan officers to increasingly rely on these
 22 discriminatory algorithms. Ellis Decl., ¶ 6, Ex. B at ¶¶ 70-78, 103-105; *see Lowery*
 23 *v. Spotify USA Inc.*, 2016 WL 6818756, at *3 (C.D. Cal. May 23, 2016) (Court
 24 selected as interim lead counsel the two firms that “interviewed numerous industry
 25 participants to confirm the theory of the case, develop the allegations, and
 26

27 _____
 28 been involved in this litigation from the outset. [Firm A] filed the [] matter first...
 they therefore will be appointed as interim class counsel.”).

1 understand the industry.”) This research is reflected in the *Braxton* FAC, which
 2 goes into great detail discussing how the algorithm’s use of geographic indicators,
 3 Bayesian Improved Surname Geocoding (which were used as demographic
 4 indicators), post-close liquidity requirements, uncorrected and racially-based home
 5 appraisals, and indefensibly high FICO requirements can cause disparate racial
 6 disparities and impact. *Id.* at ¶¶ 82-92. At the heart of the Wells Fargo process
 7 challenged in *Braxton* is a new online mortgage application and associated tools and
 8 the manner in which Wells Fargo supervised (or failed to supervise) the operation of
 9 these data collection and review processes. *Id.* at ¶¶ 82-91, 100-105.

10 The *Braxton* Firms also interviewed scores of Black victims and listened to
 11 their stories. *See Cadena, supra*, 2020 WL 3107798, at *5 (selecting as interim
 12 lead counsel the two firms that “interviewed approximately 80 putative class
 13 members as part of an ongoing independent investigation of Plaintiffs’ claims.”). In
 14 the process, the *Braxton* Firms were retained by compelling lead plaintiffs that
 15 include a Hollywood executive, a medical doctor, an award-winning playwright and
 16 actor, and a real estate entrepreneur. Ellis Decl., ¶ 6, Ex. B at ¶¶ 26-44. The
 17 *Braxton* Firms have further consulted with experts with domain expertise in
 18 algorithmic modeling and discriminatory biases associated with artificial
 19 intelligence and machine learning, consulted with civil rights and housing
 20 organizations seeking to support the *Braxton* Plaintiffs, and engaged a highly-
 21 regarded damages expert to assist the class on analyzing damages and the value of
 22 other non-monetary relief. Ellis Decl., ¶ 8. The *Braxton* Firms’ work in this case so
 23 far reflects the care and commitment they have devoted, and will continue to devote,
 24 to this litigation and the Putative Refinancing Class.

25 In addition, the first-filed *Braxton* complaint spurred the filing of all the
 26 subsequent refinancing complaints, further supporting the appropriateness of
 27 appointing the *Braxton* Firms as lead counsel. *In re GSE Bonds Antitrust Litig.*, 377
 28 F. Supp. 3d 437, 438 (S.D.N.Y. 2019) (“the Scott/Lowey complaint is clearly the

1 template for the great majority of the cases filed since and... weighs in favor of
2 appointment.”)

3 2. **The Braxton Firms Are Experienced In Both Prosecuting** 4 **And Defending Class Actions**

5 Courts applying Rule 23(g) emphasize proposed class counsel’s experience
6 and knowledge of the applicable law. *See, e.g., In re Cree, Inc. Securities Litig.*,
7 219 F.R.D. 369, 373 (M.D.N.C. 2003) (appointing class counsel in securities case
8 where firm had “extensive experience in representing institutional investors in
9 securities actions throughout the country and ... long been heavily engaged in
10 securities and corporate litigation”); *In re Terazosin Hydrochloride Antitrust Litig.*,
11 220 F.R.D. 672, 702 (S.D. Fla. 2004) (“The consideration that the Court finds to be
12 the most persuasive, however, relates to [proposed class counsel’s] experience in,
13 and knowledge of, the applicable law in this field”). As the Committee Notes to the
14 2003 amendments to Federal Rule of Civil Procedure 23 explain, designation of
15 interim counsel before class certification is appropriate because the motion for class
16 certification itself is a crucial and often hard-fought issue, involving both discovery
17 and extensive briefing. For this reason, courts should consider not only counsel’s
18 expertise with the substantive law at issue, but also “counsel’s experience in
19 handling class actions, other complex litigation, and the types of claims asserted in
20 the action.” Fed. R. Civ. P. 23(g)(2).

21 The *Braxton* Firms are uniquely qualified to serve as interim counsel for the
22 Putative Refinancing Class. Consisting largely of former “big firm” partners and
23 associates, the *Braxton* firms have extensive experience both prosecuting *and*
24 defending class actions. This dual experience makes the *Braxton* Firms uniquely
25 positioned to represent the Putative Refinancing Class because of their greater
26 knowledge of the law and the pitfalls and limitations of their putative plaintiffs’
27 theory. *See, e.g., Stringer v. Combe, Inc.*, No. 17-CV-03192-WHO, 2017 WL
28 6539779, at *1 (N.D. Cal. Dec. 21, 2017) (dismissing 42 U.S.C. § 1981 race

1 discrimination class action); *Guido v. L'Oreal, USA, Inc.*, 2013 WL 454861, at *1
 2 (C.D. Cal. Feb. 6, 2013) (dismissing class action claims under California Unfair
 3 Competition Law with prejudice). Indeed, the *Braxton* Firms could have chosen to
 4 sue Wells Fargo on a theory as expansive as others have chosen, but after
 5 investigating the case, they chose to narrow their theory to only the Putative
 6 Refinancing Class because they knew that narrowing would maximize the odds of
 7 success for that putative Class and eliminate many of the arguments Wells Fargo
 8 will make against a broader class. The *Braxton* Firms' experience is set forth, in
 9 detail, in the concurrently filed Declarations of Messrs. Ellis and Frank, but briefly
 10 summarized here:

11 **Ellis George Cipollone.** The attorneys at EGC have extensive expertise in
 12 pursuing class action and other complex commercial litigation. They possess
 13 substantial experience in plaintiffs' race discrimination cases and plaintiffs'
 14 consumer fraud, antitrust and securities fraud class action litigation against
 15 defendants in a wide variety of industries. The firm has successfully prosecuted
 16 dozens of class actions on behalf of defrauded consumers and investors. Major class
 17 action settlements in which the firm has been involved include *In re Nasdaq*
 18 *Market-Makers Antitrust Litigation* (S.D.N.Y.) (\$1.027 billion); *In re Rite Aid*
 19 *Securities Litigation* (E.D. Pa.) (\$334 million) and *In re Computer Associates*
 20 *Securities Litigation* (E.D.N.Y.) (\$134 million). Additionally, the firm has
 21 extensive consumer fraud and financial services class action litigation experience,
 22 including cases concerning improper deferred annuities sales practices that led to
 23 settlements with Pacific Life Insurance Company, American Express (IDS),
 24 Principal Life, AIG SunAmerica, and MetLife, among others, and cases concerning
 25 defective products that have resulted in settlements with Pioneer Corporation and
 26 Iomega Corporation. See Ellis Decl., ¶ 9.

27 The EGC team will be led by named partner Dennis S. Ellis. Ellis Decl., ¶ 10.
 28 Prior to joining EGC, Mr. Ellis enjoyed a sophisticated litigation practice at

1 international law firm Paul Hastings LLP for more than 24 years, where he served as
 2 Global Chair of Complex Litigation and Arbitration. *Id.* While Mr. Ellis’s practice
 3 at Paul Hastings consisted primarily of a class action and complex litigation defense
 4 work, he also has a notable track record of success on the plaintiff side. Mr. Ellis,
 5 along with Mr. Frank (when both were at Paul Hastings), obtained the largest known
 6 judgment on behalf of a Chinese firm in a U.S. court, in excess of \$2.8 billion, *New*
 7 *World TMT Limited v. PrediWave Corporation, et al.*, case no. 06-cv-05564 (N.D.
 8 Cal.), and a \$97.2 million jury verdict for claims related to an alleged failure to
 9 disclose material information in an investment solicitation, *see Pacific Coin*
 10 *Management v. BR Telephony Partners, L.P., et al.*, case nos.
 11 BC242432/BC243969. *Id.*

12 Mr. Ellis is a recipient of the Legacy of Leadership Award from the John M.
 13 Langston Bar Association of Los Angeles, and has been recognized in the Los
 14 Angeles Business Journal’s “Leaders of Influence Minority Attorneys” special issue
 15 in 2016 and 2022. *Id.* Mr. Ellis is also a Fellow of the Litigation Counsel of
 16 America’s Trial Lawyer Honorary Society, which was established to reflect the “new
 17 face of the American bar”—one that values not only accomplishments in litigation,
 18 but also ethical reputation and diversity and inclusiveness. *Id.* He has also been
 19 annually selected to the Southern California Super Lawyers List since 2007 and was
 20 selected to the Lawdragon “500 Leading Lawyers in America” list in 2021 and 2022.

21 Mr. Ellis leads an accomplished group of six EGC attorneys, including three
 22 partners, two senior counsel, and one associate, each of whom possesses diverse
 23 professional and personal backgrounds, ready to devote significant resources on
 24 behalf of the refinancing class in this case. Ellis Decl., ¶ 11. The EGC attorneys’
 25 experience is vast and varied, and includes serving as lead counsel for a government
 26 entity as part of consolidated class action proceedings involving multibillion dollar
 27 claims against major banks, including Wells Fargo; representing banks in a class
 28 action alleging that the bank aided and abetted a Ponzi scheme; and representing

1 prominent African-American journalists against major television network in claims
2 related to employment discrimination. *See generally*, Ellis Decl., ¶ 11a-f, Ex. I.

3 **Frank Sims Stolper LLP.** FSS is a plaintiffs' class action and complex
4 litigation boutique. Since its inception in 2016, FSS has enjoyed substantial success
5 in the class action arena. That includes settlements against major corporations such
6 as Wells Fargo (value at over \$400 million), Mercedes Benz (value at \$85 million);
7 Hewlett-Packard (value at \$100 million) and Toyota Motor Credit Corporation
8 (preliminary approval of settlement valued at over \$300), among others.

9 Mr. Frank, a 1997 graduate of the University of Michigan School of Law, was
10 previously an equity partner at Paul Hastings LLP. Frank Decl., ¶ 3. At Paul
11 Hastings, Mr. Frank was one of the leaders of the firm's global class action practice
12 group. *Id.* He has been a member of the editorial board for Lexis/Nexis legal
13 publications since 1999 and has also served as a member of the Board of Governors
14 for the Association of Business Trial Lawyers ("ABTL"), Los Angeles Chapter. *Id.*
15 Mr. Frank has been repeatedly included in Los Angeles Magazine's list of "Super
16 Lawyers" in Southern California. *Id.* Mr. Frank specializes in representing both
17 plaintiffs and defendants in complex litigation and consumer class actions. *Id.* In
18 his class action defense practice, he has represented fortune 500 companies, such as
19 AT&T, and major private corporations, such as L.A. Fitness. *Id.* In his plaintiff
20 practice, he has obtained verdicts and settlements totaling over a billion dollars in
21 the last ten years. *Id.* Mr. Frank will be joined by two of his partners at FSS, who
22 are likewise former "big firm" lawyers and include a former Assistant United States
23 Attorney. *See* Frank Declaration, ¶¶ 4-5.

24 The *Braxton* Firms have worked with each other on other cases, understand
25 each other's strengths, and how to leverage each firm's complimentary skills to best
26 represent the class. The extensive working relationship will enable the *Braxton*
27 Firms to efficiently allocate work based on each firm's strengths, and to avoid
28 duplication that could delay progress of the case and result in unwarranted costs.

1 Given their work on this matter to date and their collective experience, the *Braxton*
 2 Firms easily meet the Rule 23(g) criteria.

3 **3. The Braxton Firms Are Willing To Commit Significant** 4 **Resources To This Case**

5 Rule 23(g) mandates the Court consider the resources proposed class counsel
 6 will commit to the lawsuit's prosecution. *LeBeau v. U.S.*, 222 F.R.D. 613, 618
 7 (D.S.D. 2004) (“In considering the resources that counsel will commit to
 8 representing the class, the Court may consider the staff, supplies and professional
 9 commitments of that attorney.”). EGC is a bicoastal firm with 57 lawyers total, and
 10 is willing and able to contribute as many of those lawyers to this litigation as is
 11 necessary and efficient. Further, EGC has partnered with a class action boutique in
 12 FSS, and each FSS named partner is ready and willing to work on this case as
 13 necessary. This factor also takes outsized importance in a case like this one,
 14 “[b]ecause... the defendant[] in this case [is a] large financial institution[] with
 15 substantial financial and legal resources, it is likely that interim lead plaintiffs in this
 16 case will have to expend considerable resources when representing the plaintiffs.”
 17 *In re Mun. Derivatives Antitrust Litig.*, 252 F.R.D. 184, 187 (S.D.N.Y. 2008)
 18 (selecting the largest firm as interim lead counsel).

19 The *Braxton* Firms have already expended hundreds of hours investigating
 20 the facts underlying the claims against Wells Fargo, drafted highly-detailed
 21 complaints, conducted interviews of former Wells Fargo employees, and conferred
 22 with experts. By these actions, the *Braxton* Firms demonstrate their commitment to
 23 the class and their ability to devote the necessary time, effort, skill and technological
 24 resources to adequately and effectively represent the class.

25 **V. CONCLUSION**

26 For all these reasons, the *Braxton* Plaintiffs respectfully request that the Court
 27 appoint Dennis S. Ellis of EGC and Jason M. Frank of FSS as interim counsel for a
 28 Putative Refinancing Class.

1 DATED: July 28, 2022

ELLIS GEORGE CIPOLLONE
O'BRIEN ANNAGUEY LLP

3 By: /s/ Dennis S. Ellis

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1 DATED: July 28, 2022

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ATTORNEY ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Dennis S. Ellis
Dennis S. Ellis

EXHIBIT B

ELLIS GEORGE CIPOLLONE
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Attorneys for Plaintiffs Aaron Braxton,
Gia Gray, Bryan Brown, Paul Martin, on
behalf of themselves and all others
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON BRAXTON, GIA GRAY,
BRYAN BROWN AND PAUL
MARTIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a
Delaware corporation; WELLS FARGO
HOME MORTGAGE, INC., a
Delaware corporation; WELLS FARGO
& CO., a Delaware corporation,

Case No. 4:22-cv-01748-JD
Honorable James Donato
(Related to Case No. 3:22-cv-00990-JD)

**DECLARATION OF DENNIS S.
ELLIS IN SUPPORT OF
PLAINTIFFS AARON BRAXTON,
ET AL.'S MOTION FOR
APPOINTMENT OF INTERIM
COUNSEL FOR A PUTATIVE
REFINANCING CLASS**

Date: July 21, 2022
Time: 10:00 a.m.
Crtrm.: 11

Trial Date: None set.

DECLARATION OF DENNIS S. ELLIS

I, Dennis S. Ellis, declare and state as follows:

1. I am an attorney at law, duly admitted to practice before this Court and all courts of the State of California. I am a partner with Ellis George Cipollone O'Brien Annaguey LLP, counsel of record for Plaintiffs Aaron Braxton, Gia Gray, Bryan Brown, Paul Martin, on behalf of themselves and all others similarly situated in this matter. This declaration is submitted in support of Plaintiffs' Opposition to Defendants Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Inc., and Wells Fargo & Co.'s ("Wells Fargo Defendants") Motion to Dismiss or, in the Alternative, Stay Proceedings in this action. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could competently testify thereto.

FILED ACTIONS AGAINST WELLS FARGO

2. On March 18, 2022, Plaintiff Aaron Braxton and the *Braxton* Firms filed the first putative class action against Wells Fargo on behalf of Black homeowners who had submitted refinance applications to Wells Fargo and were harmed by Wells Fargo's alleged race-based discrimination. Dkt. 1. The *Braxton* Complaint sought to represent a class of all Black persons in the United States who, from January 1, 2018 through the present (the "Class Period"), submitted an application to refinance their home mortgage through Defendants that was (i) processed at a rate slower than that of the average processing time of applications made by non-Black applicants; or (ii) whose applications were denied; or (iii) whose resulting refinance loans were made at higher interest rates as compared to similarly situated non-Black applicants. A true and correct copy of the complaint is attached hereto as **Exhibit A**.

3. On April 12, 2022, the *Braxton* Plaintiffs filed their First Amended Complaint ("FAC"). Dkt. 14. A true and correct copy of the *Braxton* First Amended Complaint is attached hereto as **Exhibit B**.

1 4. In addition to this *Braxton* action, five additional putative class actions
2 are pending in this District in which the plaintiff seeks to represent Black
3 homeowners allegedly discriminated against by Wells Fargo. The cases are:

4 a. On February 17, 2022, a putative class action complaint was
5 filed against Wells Fargo Bank, N.A and Wells Fargo & Company titled
6 *Christopher Williams v. Wells Fargo Bank, N.A. et al.*, No. 3:22-cv-00990-JD
7 (“*Williams*”). A true and correct copy of the *Williams* complaint is attached hereto
8 as **Exhibit C**. The *Williams* complaint included several factual allegations, ranging
9 from Wells Fargo’s “long history of maintaining a corporate culture replete with
10 harmful racial stereotypes and biased views about African American customers” and
11 its discrimination against African American employees to its intentional use of
12 factors “to determine eligibility for home loan rates, terms, and conditions that
13 facilitate redlining and reverse redlining against and disfavor African American
14 borrowers.” Dkt. 1 at ¶¶ 7-13 (*Williams*). On April 14, 2022, the *Williams* plaintiffs
15 filed a First Amended Complaint. A true and correct copy of the *Williams* First
16 Amended Complaint is attached hereto as **Exhibit D**. Despite not having a single
17 representative plaintiff whose refinancing application was denied by Wells Fargo,
18 the *Williams* First Amended Complaint included, for the first time, allegations
19 relating to Wells Fargo’s discrimination against Black Americans who submitted
20 applications for refinancing and sought to represent a class of Black and/or African
21 American applicants or borrowers who applied for, received, or maintained credit
22 from Defendants related to residential real estate and who were subjected to
23 discrimination by Defendants due to their race. This Court related the *Williams* and
24 *Braxton* actions on June 9, 2022, but denied Wells Fargo’s motion to dismiss
25 *Braxton* on grounds of the pending *Williams* action, noting “[t]he *Williams* action
26 involves a proposed class of African American applicants who applied for, received,
27 or maintained credit from Wells Fargo related to residential real estate, while the
28 *Braxton* action involves a proposed class of African American homeowners who

1 submitted applications to refinance their home mortgages. The cases are sufficiently
 2 similar for purposes of relation under the District’s local rules, but not so similar
 3 that *Braxton* is subsumed in *Williams*.” Dkts. 37, 44.

4 b. On March 21, 2022, a putative class action complaint was filed
 5 against Wells Fargo Bank, N.A and Wells Fargo & Company titled *Pope v. Wells*
 6 *Fargo Bank, N.A.*, Case No. 3:22-cv-01793-JD (“*Pope*”). The complaint was
 7 amended on March 25, 2022. The plaintiff in *Pope* seeks to represent all minority
 8 borrowers who were allegedly discriminated against by Wells Fargo in the refinance
 9 process. A true and correct copy of the *Pope* First Amended Complaint is attached
 10 hereto as **Exhibit E**.

11 c. On March 26, 2022, a putative class action complaint was filed
 12 against Wells Fargo Bank, N.A and Wells Fargo & Company titled *Thomas v. Wells*
 13 *Fargo Bank, N.A.*, Case No.3: 22-cv-01931-CRB (“*Thomas*”). The complaint in
 14 *Thomas* is word-for-word identical to the complaint in *Pope*, other than differing
 15 allegations related to the named plaintiffs in the two cases and grammatical edits
 16 related thereto. Thus, although the *Thomas* action is limited to refinancing, it
 17 extends to all minority borrowers, not just Black borrowers. The *Thomas* action is
 18 currently pending before Judge Breyer in this District and has not been related to
 19 any other cases in this District. To the best of the *Braxton* Plaintiffs’ knowledge, the
 20 *Thomas* complaint has not been served on Wells Fargo. A true and correct copy of
 21 the *Thomas* complaint is attached hereto as **Exhibit F**.

22 d. On April 26, 2022, a putative class action complaint was filed
 23 against Wells Fargo Bank, N.A and Wells Fargo & Company titled *Ebo v. Wells*
 24 *Fargo Bank, N.A.*, Case No. 22-cv-02535-SK (“*Ebo*”). The matter was previously
 25 filed in the Eastern District of New York, but voluntarily dismissed on April 29,
 26 2022. The *Ebo* proposed class is limited to Black borrowers, but extends to all types
 27 of loans related to residential real property. A true and correct copy of the *Ebo*
 28 complaint is attached hereto as **Exhibit G**.

e. On June 10, 2022, a putative class action complaint was filed against Wells Fargo Bank, N.A and Wells Fargo & Company titled *Perkins, et al. v. Wells Fargo, N.A.*, case no. 22-cv-03455 (“*Perkins*”). The Perkins plaintiff seeks to represent a broad class, including all racial minorities who submitted, or attempted to submit, an application to finance *or* refinance their home mortgage. A true and correct copy of the *Perkins* complaint is attached hereto as **Exhibit H**.

5. As of the filing of this motion, in addition to the *Braxton* action, this Court has related *Pope, Ebo*, and *Perkins* to the *Williams* action, such that all five actions are pending before this Court. The *Braxton* Firms also understand that, upon being served, Wells Fargo intends to seek relation of the *Thomas* case.

WORK PERFORMED BY THE BRAXTON FIRMS

6. In preparing its case against Wells Fargo, the *Braxton* Firms interviewed dozens of confidential informants with knowledge of Wells Fargo’s refinance operations which revealed (1) that the bank collects “key geographic, financial, and demographic data” and processes them in a CORE algorithm, (2) that Wells Fargo management got real-time data about how its policies were worsening racial disparities, and (3) that, rather than rectifying the problem, management pressured loan officers to increasingly rely on these discriminatory algorithms, and failed to control for its discriminatory practices.

7. Through its investigation and research, the *Braxton* Firms have developed an initial understanding of Wells Fargo’s underwriting algorithm and identified and investigated the algorithm’s differences based on the type of loan, specifically loan origination (purchase money loans) versus refinance; analyzed Wells Fargo’s COVID-19 era algorithmic overlays; examined Wells Fargo’s appraisal process and its discriminatory impact on the Putative Refinancing Class; and interviewed members of the Putative Refinancing Class.

8. The *Braxton* Firms have further consulted with experts with domain expertise in algorithmic modeling and discriminatory biases associated with

1 artificial intelligence and machine learning, consulted with civil rights and housing
 2 organizations seeking to support the *Braxton* Plaintiffs, and engaged a highly-
 3 regarded damages expert to assist the class on analyzing damages and the value of
 4 other non-monetary relief.

5 QUALIFICATIONS AS INTERIM COUNSEL

6 9. Ellis George Cipollone O'Brien Annaguey LLP ("Ellis George
 7 Cipollone" or "EGC") is based in Century City, California and has offices in
 8 Downtown Los Angeles, San Francisco, New York, and Washington D.C. The
 9 attorneys at Ellis George Cipollone have extensive expertise in pursuing class action
 10 and other complex commercial litigation. They possess substantial experience in
 11 plaintiffs' consumer fraud, antitrust and securities fraud class action litigation
 12 against defendants in a wide variety of industries. The firm has successfully
 13 prosecuted dozens of class actions on behalf of defrauded consumers and investors.
 14 Major class action settlements in which the firm has been involved include *In re*
 15 *Nasdaq Market-Makers Antitrust Litigation* (S.D.N.Y.) (\$1.027 billion); *In re Rite*
 16 *Aid Securities Litigation* (E.D. Pa.) (\$334 million) and *In re Computer Associates*
 17 *Securities Litigation* (E.D.N.Y.) (\$134 million). Additionally, the firm has
 18 extensive consumer fraud and financial services class action litigation experience,
 19 including cases concerning improper deferred annuities sales practices that led to
 20 settlements with Pacific Life Insurance Company, American Express (IDS),
 21 Principal Life, AIG SunAmerica, and MetLife, among others, and cases concerning
 22 defective products that have resulted in settlements with Pioneer Corporation and
 23 Iomega Corporation. A true and correct copy of the firm's resume with
 24 backgrounds of attorneys proposed to work on this case is attached as **Exhibit I**.

25 10. Ellis George Cipollone's team in this matter will be led by **Dennis S.**
 26 **Ellis**. Prior to joining EGC, Mr. Ellis enjoyed a sophisticated litigation practice at
 27 international law firm Paul Hastings LLP for more than 24 years, where he served as
 28 Global Chair of Complex Litigation and Arbitration. While Mr. Ellis is well-known

1 for representing international celebrities, cosmetic companies, and his consumer
 2 class action defense practice, he also has a notable track record of success on the
 3 plaintiff side. Mr. Ellis obtained the largest known judgment on behalf of a Chinese
 4 firm in a U.S. court, in excess of \$2.8 billion, *New World TMT Limited v.*
 5 *PrediWave Corporation, et al.*, and a \$97.2 million jury verdict for claims related to
 6 an alleged failure to disclose material information in an investment solicitation, *see*
 7 *Pacific Coin Management v. BR Telephony Partners, L.P., et al.*. Annually selected
 8 to the Southern California Super Lawyers List since 2007, Mr. Ellis was also
 9 selected to the Lawdragon “500 Leading Lawyers in America” list in 2022, is a
 10 recipient of the Legacy of Leadership Award from the John M. Langston Bar
 11 Association of Los Angeles, and has been recognized in the Los Angeles Business
 12 Journal’s “Leaders of Influence Minority Attorneys” special issue in 2016 and 2022.
 13 Mr. Ellis is also a Fellow of the Litigation Counsel of America’s Trial Lawyer
 14 Honorary Society, which was established to reflect the “new face of the American
 15 bar”—one that values not only accomplishments in litigation, but also ethical
 16 reputation and diversity and inclusiveness. Mr. Ellis was also named to the Top 20
 17 under 40 list by the Daily Journal and named a California Lawyer of the Year by
 18 California Lawyer Magazine in 2006.

19 11. Ellis George’s team will be supported by six other attorneys, including
 20 three partners, two senior counsel, and one associate.

21 a. **Trent Copeland**, a partner in Ellis George’s Century City office,
 22 began his career at a major multinational law firm and then as a solo practitioner
 23 specializing in both criminal and civil litigation. He is a nationally recognized
 24 attorney and has successfully defended hundreds of serious high stakes civil and
 25 criminal matters including several capital offenses. Mr. Copeland has represented
 26 two prominent African-American journalists against major television network in
 27 claims related to employment discrimination, and within the last year, led the
 28 representation of a high-profile news anchor in obtaining a confidential multi-

1 million dollar resolution of claims of discrimination against a major television
2 network.

3 b. **Noah Helpern**, a partner in Ellis George's downtown Los
4 Angeles office, has over 15 years of experience in complex commercial litigation on
5 behalf of both plaintiffs and defendants. Mr. Helpern has litigated extensively on
6 behalf of plaintiffs against banks, including: on behalf of the San Diego Association
7 of Governments in a multi-billion dollar antitrust putative class action currently
8 pending in the U.S. District Court for the Southern District of New York alleging
9 improper collusion among banks with respect to interest rates for municipal bonds;
10 on behalf of monoline insurer MBIA Insurance Corporation as subrogee to claims
11 under California securities laws of purchasers of residential mortgage backed
12 securities for losses in excess of \$2.5 billion in connection with securitizations
13 comprised of Countrywide and IndyMac mortgages; on behalf of Assured Municipal
14 Guaranty as subrogee to claims under California securities laws of purchasers of
15 residential mortgage backed securities for losses in excess of \$235 million in
16 connection with securitizations comprised of IndyMac mortgages. In addition, Mr.
17 Helpern has represented banks, including in class actions, such as his representation
18 of East West Bank in a class action alleging the bank aided and abetted an alleged
19 Ponzi scheme perpetrated by Terchi Liao and AOB Commerce, Inc. He also has
20 extensive experience in alternative dispute resolution and served as a teaching
21 assistant for the Harvard Negotiation Institute (formerly Program of Instruction for
22 Lawyers) at Harvard Law School's Program on Negotiation.

23 c. **Ryan Keech** is a partner in Ellis George's Century City office,
24 whose practice involves advising and representing companies and individuals in
25 high-stakes business and entertainment disputes from matter inception through trial.
26 Mr. Keech has represented U.S. and foreign clients in trial and appellate litigation
27 and arbitration in a wide variety of industries, including feature and television
28 production, general media and entertainment, toys and other consumer products,

1 cosmetics, financial services, insurance, social media and mobile technology. In the
 2 financial services context, Mr. Keech has significant experience as part of teams
 3 handling plaintiff-side litigation against the major banks in the residential mortgage
 4 context and otherwise. Along with a team of EGC lawyers, Mr. Keech currently
 5 serves as lead counsel for a Southern California government entity as part of
 6 consolidated class action proceedings pending in the Southern District of New York
 7 involving multibillion dollar claims against major banks, including Wells Fargo,
 8 arising out of these banks' alleged manipulation of the Variable Rate Demand
 9 Obligation ("VRDO") market. Mr. Keech has previously served, among others, as
 10 part of litigation teams litigating multibillion dollar claims against the major banks
 11 arising out of the collapse of the residential mortgage backed securities ("RMBS")
 12 market; as part of the litigation team that acted on behalf of institutional investors
 13 against numerous banks that participated in settling the U.S. Dollar LIBOR
 14 benchmark interest rates; as part of the court-appointed co-lead class counsel
 15 litigation team in MDL litigation against fourteen of the world's largest banks,
 16 including Wells Fargo, alleged to have manipulated the ISDAFix interest rate
 17 benchmark; and as part of the court-appointed co-lead class counsel litigation team
 18 in class action litigation concerning price fixing and manipulation of worldwide
 19 gold prices.

20 d. **Joseph Kiefer**, who clerked for Judge Thomas W. Thrash of the
 21 Northern District of Georgia, is a senior counsel in Ellis George's New York office.
 22 With ten years of experience, Mr. Kiefer's practice focuses primarily on plaintiff-
 23 side antitrust cases. Mr. Kiefer has been a part of many of the most notable and
 24 successful antitrust cases from the last few years, including cases involving complex
 25 financial products, intricate and concealed agreements, and groundbreaking
 26 damages calculations. Mr. Kiefer was recently recognized in the 2022 edition of
 27 The Best Lawyers in America as a "One to Watch" in the field of Antitrust Law and
 28 received the American Antitrust Institute 2018 Antitrust Enforcement Award.

1 e. **Milin Chun**, a senior counsel in Ellis George's downtown Los
2 Angeles office, has 15 years of experience in both criminal and civil litigation. Prior
3 to joining EGC, Ms. Chun's practice focused on white collar criminal defense, civil
4 rights, class action prosecution, and mass tort litigation. In her plaintiffs practice,
5 Ms. Chun has represented African American and Hispanic inmates in suits against
6 both the State of California and the federal government arising from the inmates'
7 exposure to coccidioidomycosis and victims of the 1998 embassy bombings in
8 Kenya and Tanzania in their suit against the Republic of the Sudan and the Islamic
9 Republic of Iran. Ms. Chun also previously served on the Editorial Advisory Board
10 for *The Daily Record*, Maryland's business and legal newspaper.

11 f. **Stefan Bogdanovich** is a fourth-year associate in Ellis George's
12 Century City office, whose practices complex commercial litigation, including class
13 action, data privacy, IP, and entertainment litigation..

14 Executed this 28^h day of June 2022, at Los Angeles, California.

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17
18 /s/ Dennis S. Ellis
19 Dennis S. Ellis
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28

EXHIBIT A

ELLIS GEORGE CIPOLLONE
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Attorneys for Plaintiff Aaron Braxton, on
behalf of himself and all others similarly
situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON BRAXTON, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a
Delaware corporation; WELLS FARGO
HOME MORTGAGE, INC., a

Case No.

**CLASS ACTION COMPLAINT
FOR:**

**1. VIOLATION OF THE EQUAL
CREDIT OPPORTUNITY ACT,
15 U.S.C. § 1691, *ET SEQ.*
2. RACE DISCRIMINATION IN
VIOLATION OF THE FAIR**

Case No.

COMPLAINT

Delaware corporation,
 Defendants.

**HOUSING ACT OF 1968, 42
 U.S.C. § 3601, *ET SEQ.*
 3. RACE DISCRIMINATION IN
 VIOLATION OF 42 U.S.C. § 1981
 4. VIOLATION OF THE UNRUH
 CIVIL RIGHTS ACT,
 CALIFORNIA CIVIL CODE § 51
 5. VIOLATION OF THE
 CALIFORNIA UNFAIR
 COMPETITION LAW**

DEMAND FOR JURY TRIAL

Plaintiff Aaron Braxton, individually and as a representative of a nationwide class of Black applicants for home mortgage refinancing through Wells Fargo and its related entities (collectively “Plaintiffs” or the “Class”), alleges as follows:

I. NATURE OF ACTION

1. Homeownership has long been considered the cornerstone of the American Dream—allowing citizens to accumulate wealth through access to credit, generating equity, and reducing housing costs.¹ For a decade, historically low interest rates have provided more and more Americans with access to this dream and, by way of refinanced lower home mortgages, the ability to pass their properties on to their next generation.

2. But careful students of American history know that homeownership has for far too long been unattainable for a disproportionate number of Black Americans, and even worse, more difficult for Black Americans to maintain once achieved. Indeed, prior to the passage of the Civil Rights Act (and sometimes even afterwards), Black American homeowners were systematically denied access to the financial benefits of this particular American Dream through the use of pernicious

¹ <https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=1c78499623b5>

1 and pervasive race-based exclusions. These included, for example, the Federal
 2 Housing Administration’s refusal to insure mortgages in and near Black
 3 neighborhoods—a practice now referred to as “redlining”—at the same time that the
 4 FHA subsidized builders who mass-produced entire subdivisions made for White
 5 Americans. These also included restrictive covenants in deeds that prohibited or
 6 restricted the sale of American homes to Black Americans.

7 3. The passage of the Civil Rights Act in 1965—and the judicial
 8 interventions that followed—were supposed to fix that historical injustice, eliminate
 9 race-based gatekeeping practices like redlining and restrictive covenants while
 10 righting this long-standing American wrong. For many homeowners seeking a first
 11 or refinanced mortgage with some banks, it did.

12 4. However, despite publicly touting their commitment to “help[] ensure
 13 that all people across our workforce, our communities, and our supply chain feel
 14 valued and respected and have equal access to resources, services, products, and
 15 opportunities to succeed,”² Defendants in this case—Wells Fargo Bank, N.A. and
 16 Wells Fargo Home Mortgage (collectively “Defendants” or “Wells Fargo”)—have
 17 continued to discriminate against Black American home loan applicants. Federal
 18 data shows that over the last several years thousands of Black homeowners have
 19 been unable to maintain the dream of home ownership because of Wells Fargo’s
 20 ongoing and discriminatory modern day “redlining” practices. These practices
 21 delayed, obstructed and denied Black homeowners the benefit of lower interest rates
 22 obtained through refinancing, forcing them to pay more for their loans than was
 23 required of non-Black applicants, and in many cases sending them into foreclosure.³

24
 25 _____
 26 ² <https://www.wellsfargo.com/about/diversity/diversity-and-inclusion/>

27 ³ https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Covid_Black_Forbearance_Foreclosure.pdf
 28

1 5. Bloomberg reported that the data released under the federal Home
 2 Mortgage Disclosure Act shows unequivocally that Wells Fargo rejects a
 3 disproportionate number of Black homeowners' refinancing applications.⁴ Wells
 4 Fargo also makes the refinancing application process purposely more difficult and
 5 less attractive for Black applicants than others—on a consistently national scale—
 6 demanding higher interest rates for loans secured by homes located in
 7 neighborhoods with greater proportions of Black residents by placing its loan
 8 officers much farther away from those same neighborhoods.⁵ And Wells Fargo
 9 customers report that loan officers state that certain “areas” with large Black
 10 populations are ineligible for rapid valuations.⁶ Black applicants are further
 11 subjected to delays, feigned mistakes, and other obstacles, leading many Black
 12 Americans to withdraw their requests for refinancing, and leading others to wait
 13 indefinitely while Wells Fargo refuses to act upon their applications.

14 6. Wells Fargo also uses automated algorithms and machine learning to
 15 make underwriting decisions. But these, too, are infected with Wells Fargo's
 16 pervasive race-based discrimination. Wells Fargo's algorithms and machine
 17 learning select “areas” and other characteristics for greater or lesser scrutiny of
 18 credit applications, which, over time, only exacerbates the wealth disparities
 19 between people living in those areas or among groups which tend to have certain
 20 characteristics analyzed by the algorithms and machine learning.

21 7. Numbers do not lie and, here, the numbers tell a shameful story,
 22 without any legitimate explanation. Data from eight million refinancing
 23

24 ⁴ [https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)
 25 [refinancing/](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)

26 ⁵ *Id.*

27 ⁶ *Id.*

1 applications from 2020 reveal that “the highest-income Black applicants [had] an
 2 approval rate about the same as White borrowers in the lowest-income bracket.”⁷
 3 White refinancing applicants earning between \$0 and \$63,000 a year were *more*
 4 *likely* to have their refinancing application approved by Wells Fargo than Black
 5 refinancing applicants earning between \$120,000 and \$168,000 a year.⁸ Overall, in
 6 2020, Wells Fargo rejected a *majority* of all the completed applications submitted
 7 by Black homeowners.⁹ And because Wells Fargo designed an application process
 8 that is disproportionately difficult for Black homeowners to complete, 27% of all
 9 Black homeowners who began a refinance application with Wells Fargo withdrew
 10 it.¹⁰

11 8. As a result of its discriminatory practices, Wells Fargo was the only
 12 major lender in the United States that approved a smaller share of refinancing
 13 applications from Black homeowners in 2020 than it had in 2010.¹¹ And its
 14 disproportionately low approval rates for Black applicants are well below the national
 15 average.

16 9. In 2020—at the height of the refinancing boom, when millions of
 17 Americans benefitted from the historically low interest rate environment—Wells
 18 Fargo approved 47% of all applications by Black homeowners (meaning that Wells
 19 Fargo rejected the majority of applications from Black homeowners), whereas all
 20
 21
 22

23 ⁷ *Id.*

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ *Id.*

1 other lenders approved 71% of all applications by Black homeowners.¹²

2 10. No other lending institution rejected a majority of Black homeowners’
3 applications for refinancing.¹³

4 11. Wells Fargo also systematically and discriminatorily applied to Black
5 refinance applicants some of the tightest lending standards in the industry, which
6 disproportionately affect minority applicants.¹⁴ A study done by the Board of
7 Governors of the Federal Reserve System analyzing federal mortgage data stated
8 that they “do not have any evidence [a]s to whether these tighter standards reduce
9 loan risk to justify the disparate impact on minority denials they are associated
10 with.”¹⁵ And after controlling for relevant underwriting factors (debt-to-income
11 ratios, loan-to-value ratios, credit scores, etc.) the study found that “[l]enders who
12 impose the strictest standards on their white applicants [like Wells Fargo] tend to
13 have the largest unexplained excess denials of minority applicants.”¹⁶

14 12. Plaintiff Aaron Braxton is one victim of Wells Fargo’s discriminatory
15 policies. Mr. Braxton is a financially successful and eminently creditworthy Black
16 playwright, performer, and a math and science teacher with a Masters degree from
17 the University of Southern California.¹⁷ He has authored several award winning

18 ¹² *Id.*

19 ¹³ <https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/>

20 ¹⁴ *Id.*

21 ¹⁵ *How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human and Algorithmic Credit Decisions*, Neil Bhutta, Aurel Hizmo, and Daniel Ringo (July 2021), at 12, n.20. Available at:

22 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663

23 ¹⁶ *Id.* at 12.

24 ¹⁷ https://www.imdb.com/name/nm1347914/bio?ref=nm_ov_bio_sm

1 plays, including *DID YOU DO YOUR HOMEWORK?*, which broke the Beverly
2 Hills Playhouse's record for longest running play (9 months).¹⁸ He has also written
3 several films and television pilots, and acted in several film, television, and theatre
4 projects.¹⁹

5 13. In addition, for two decades, Mr. Braxton was a loyal Wells Fargo
6 mortgage customer. He purchased his home in 2000, in a historically Black
7 neighborhood located in South Los Angeles near the campus of the University of
8 Southern California and secured his property with a Wells Fargo home mortgage
9 insured by the Federal Housing Administration. Mr. Braxton always made his
10 mortgage payments and bills on time, and he had a good credit score.

11 14. Yet despite his successful career and his creditworthiness, when Mr.
12 Braxton sought to refinance his home mortgage loans in August of 2019, Wells
13 Fargo consistently obstructed his ability to refinance his loan. Despite favorable
14 loan-to-value metrics and his personal history with the institution, Wells Fargo was
15 focused more on his race and the location of his home within a historically Black
16 Los Angeles neighborhood, and used the fact of his race and the location of his
17 home to delay, obstruct and deny him the full benefits of historically low home
18 mortgage interest rates. Wells Fargo did this even though, having paid his loan for
19 more than 18 years, Mr. Braxton had equity in his home far greater than the amount
20 remaining, on his Federal Housing Administration (FHA) secured loan.

21 15. Mr. Braxton was given the runaround to such an extent that it took him
22 over nine months to refinance his federally backed mortgage loan (and 12 months to
23 refinance his home equity loan) at an above-market interest rate of around 4%. This
24 was after various Wells Fargo representatives kept telling him they lost his
25 paperwork, made incomplete inquiries and needed to request more information,

26 ¹⁸ *Id.*

27 ¹⁹ *Id.*

1 delayed its responses, and even placed him into an unsolicited debt-trap deferred
2 payment program without his permission. It was only after Mr. Braxton notified the
3 Department of Housing and Urban Development (“HUD”) that Wells Fargo
4 approved the refinancing of his federally backed FHA loan (indeed, Wells Fargo
5 approved the application the very next day). Of course, for the prolonged period
6 that Mr. Braxton was waiting for Wells Fargo to refinance his loans, he was paying
7 the higher rates associated with his original loans.

8 16. Mr. Braxton’s experience is unfortunately consistent with the
9 experiences of thousands of Black Americans who have been victimized by Wells
10 Fargo’s intentional, knowing and systematic race discrimination, violating the
11 contractual, commercial and civil rights of Class members and causing millions (and
12 perhaps even billions) of dollars in damages to the Nationwide Class. Individually
13 and as a representative of the Class, Mr. Braxton brings this action to make good to
14 the Class all damages resulting from Defendants’ violations of the federal civil
15 rights laws and to restore to the Class any amounts to which they otherwise would
16 have been entitled, together with other equitable and remedial relief as the Court
17 may deem appropriate.

18 **II. JURISDICTION AND VENUE**

19 17. This Court has federal question jurisdiction over this matter pursuant to
20 28 U.S.C. §§ 1331, 1332(d), and 1343, because the Plaintiff asserts federal causes of
21 action, because Plaintiff asserts civil rights causes of action, and because at least one
22 member of the Class is a citizen of a different state than all Defendants, and because
23 the amount in controversy exceeds \$5,000,000.

24 18. Personal jurisdiction is appropriate over Defendants because Wells
25 Fargo Bank, N.A. transacts business in the State of California and has its principal
26 place of business in San Francisco, California. Wells Fargo Home Mortgage, Inc.
27 originates loans to California customers from its California offices and maintains a
28 systematic and continuous presence in the State.

19. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because Wells Fargo Bank, N.A. resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district, and Wells Fargo Bank, N.A.'s principal place of business is in this district.

III. PARTIES

20. Plaintiff Aaron Braxton, who is Black, is a natural person and a citizen of the State of California and resides in Los Angeles, California.

21. Defendant Wells Fargo Bank, N.A. is a publicly traded, global financial services firm and a Fortune 500 corporation incorporated in Delaware with its principal place of business in San Francisco, California. As of December 31, 2020, Wells Fargo has assets of approximately \$1.9 trillion, loans of \$887.6 billion, deposits of \$1.4 trillion, and stockholders' equity of \$185 billion. Wells Fargo is a mortgage lender; and also provides a wide variety of financial products and services to its global and domestic clients.

22. Defendant Wells Fargo Home Mortgage, Inc. is a home lending company that is part of the “Wells Fargo banking family.” It operates about 725 mortgage stores nationally and originates and services one-to-four-family residential first and junior-lien mortgages and home equity loans. On average, it originates approximately \$300 billion worth of loans per year. It is incorporated in the State of Delaware, and has its principal place of business in Des Moines, Iowa. Wells Fargo Home Mortgage, Inc. originates loans to California customers from its California office locations.

IV. FACTUAL ALLEGATIONS

23. During the last few years interest rates were near an all-time low in the United States, and homeowners who held mortgage loans at higher rates (meaning a great deal of homeowners) sought to refinance their loans at lower rates. Refinancing would allow a homeowner to significantly reduce their monthly payments and to owe less mortgage interest over the life of the loan. Over the last

1 two years, homeowners in the United States refinanced over \$5 trillion worth of
2 mortgages.

3 **A. Wells Fargo's Discriminatory Refinancing Practices**

4 24. Wells Fargo is a major issuer of home-based loans in the United States,
5 holding nearly a trillion dollars in outstanding debt.

6 25. Wells Fargo's discrimination began at the latest in 2018 and continues
7 through today.

8 26. In 2020, Defendant Wells Fargo approved Black homeowner
9 refinancing applications at a rate lower than that of any other major lender in
10 America. It is the only lender that approved fewer such applications in 2020 than it
11 did in 2010.²⁰

12 27. Bloomberg analyzed data from eight million refinancing applications
13 from 2020, released under the Home Mortgage Disclosure Act, and found that, for
14 Wells Fargo, "the highest-income Black applicants [had] an approval rate about the
15 same as White borrowers in the lowest-income bracket."²¹

16 28. The disparate treatment of Black applicants results at least in part from
17 Wells Fargo's tactics that, in practice, perpetuate redlining of areas with
18 disproportionately more Black residents and imposing in those areas hurdles and
19 obstacles that either delay or prevent refinancing.

20 29. For example, in order to minimize the likelihood and frequency of
21 Black mortgage applications, Wells Fargo systematically and intentionally places its
22 loan officers in areas with disproportionately low numbers of Black residents. In
23 many cities across the nation with large Black populations, like Atlanta, Baltimore,
24

25 _____
26 ²⁰ <https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/>

27 ²¹ *Id.*
28

1 and Philadelphia, Wells Fargo's online store locator will direct individuals in
 2 predominately Black ZIP codes to areas in predominately White ZIP codes.²²
 3 Likewise, in New Haven, Connecticut, which in 2020 was a hot spot for denials, the
 4 nearest Wells Fargo loan officer available to homeowners was 25 miles away. Even
 5 to initiate the application process by visiting a loan officer, a Black applicant had to
 6 do more than a non-Black applicant.

7 30. The effect of this is clear: while Wells Fargo's approval rates for Black
 8 refinancing applicants are much lower than the approval rates for Black applicants at
 9 other national banks, *this gap widens in counties with more Black residents*.²³ As
 10 noted above, nationally, Wells Fargo approved just 47% of its Black refinancing
 11 applicants.²⁴ However, in Fulton County, which has more Black than white
 12 residents, Wells Fargo only approved 43% of its Black refinancing applications,
 13 nearly 10% less than its already-low national approval rate.²⁵

14 31. And even for those Black applicants whose loans were ultimately
 15 approved, they faced delays that White applicants living in predominately White
 16 neighborhoods did not, causing them damages through continued higher mortgage
 17 rates during the unjustified delay as they awaited loan approval. In some cases,
 18 Wells Fargo officers simply told Black applicants living in predominately Black
 19 neighborhoods that "perhaps the area is not eligible" for quick evaluations of
 20 refinancing applications.²⁶ Wells Fargo regularly approved refinancing applications

21
 22 ²² <https://www.wellsfargo.com/locator/mortgage/consultant> .

23 ²³ <https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/>
 24

25 ²⁴ *Id.*

26 ²⁵ *Id.*

27 ²⁶ *Id.*
 28

1 of non-Black homeowners in a matter of weeks, but only approved the applications
 2 of Black homeowners after many months (if those Blacks applicants happened to be
 3 approved).

4 32. Wells Fargo also perpetuated its discriminatory practices using
 5 algorithms. Wells Fargo identifies neighborhoods eligible for quick evaluations of
 6 refinancing applications using an internal algorithm.

7 33. The director of the CFPB describes these types of banking algorithms
 8 as “black boxes behind brick walls.”²⁷ “When consumers and regulators do not
 9 know how decisions are made by the algorithms, consumers are unable to
 10 participate in a fair and competitive market free from bias.”²⁸

11 34. Wells Fargo’s algorithm singled out predominately Black
 12 neighborhoods and labeled those neighborhoods ineligible for rapid processing,
 13 which led loan officers to inform Black applicants that they could not enjoy the
 14 same rapid application processing as white applicants.

15 35. Wells Fargo’s lending standards also help to perpetuate its
 16 discrimination of Black applicants. Wells Fargo has the strictest lending policies of
 17 any other major lender.²⁹ And as a result, Wells Fargo has the largest disparity
 18 between the approval rates of Black refinancing applicants to white refinancing
 19 applicants—25% compared to 16%.³⁰ A study done by the Board of Governors of
 20 the Federal Reserve System analyzing federal mortgage data stated that they “do not

21
 22 ²⁷ <https://www.consumerfinance.gov/about-us/newsroom/remarks-of-director-rohit-chopra-at-a-joint-doj-cfpb-and-occ-press-conference-on-the-trustmark-national-bank-enforcement-action/>

23
 24 ²⁸ *Id.*

25 ²⁹ <https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/>

26
 27 ³⁰ *Id.*

1 have any evidence [] as to whether these tighter standards reduce loan risk to justify
 2 the disparate impact on minority denials they are associated with.”³¹ And after
 3 controlling for relevant underwriting factors (debt-to-income ratios, loan-to-value
 4 ratios, credit scores, etc.) the study found that “[l]enders who impose the strictest
 5 standards on their white applicants tend to have the largest unexplained excess
 6 denials of minority applicants.”³² The study also found that, under the more
 7 stringent standards, “Black applicants are 1.9 percentage points more likely...to be
 8 denied than a comparable white applicant after controlling flexibly for an array of
 9 important underwriting factors.”³³

10 36. This Federal Reserve study also found that the most common reasons
 11 for denials “for Black applicants [were] ‘incomplete’ [documents] and
 12 ‘verification’” issues.³⁴ The study found that loan officers like those of Wells Fargo
 13 “may work less diligently with minority borrowers to gather all necessary
 14 documents or verify aspects of their application, resulting in a denial.”³⁵ Excess
 15 denials are also caused by “issues with the latter stages of the mortgage application
 16 process that disproportionately affect minorities.”³⁶ Wells Fargo’s loan officers’
 17 lack of diligence in processing applications from Black homeowners seeking
 18 refinancing caused disproportionate delays in the processing of their applications,
 19

20 ³¹ *How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human*
 21 *and Algorithmic Credit Decisions*, Neil Bhutta, Aurel Hizmo, and Daniel Ringo
 (July 2021), at 12, n.20. Available at:

22 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663

23 ³² *Id.* at 12.

24 ³³ *Id.* at 9.

25 ³⁴ *Id.* at 13.

26 ³⁵ *Id.* at 13, n.23.

27 ³⁶ *Id.* at 14.

1 causing damage even when the loans were ultimately approved.

2 37. The above practices are arbitrary and artificial and unnecessary to
3 achieve a valid interest or legitimate objective. The vast difference between
4 refinancing approval rates Wells Fargo issued to Black Americans as compared to
5 any other lending institutions' approval rates negates any possible legitimate
6 objective.

7 38. As noted, the above practices have a disproportionately adverse effect
8 on Black Americans seeking to refinance their loans. Black Americans are
9 members of a protected class.

10 39. Wells Fargo's practices directly harmed Black Americans by forcing
11 them to pay higher interest rates while applications were pending, by forcing them
12 to pay higher interest rates when applications were completed, and/or by denying
13 refinancing applications. In the absence of these policies, Black Americans would
14 not have had to pay higher rates or face rejection in their refinancing applications.

15 40. The disparity between Wells Fargo's treatment of Black American
16 applicants and non-Black American applicants is significant and shocking. As
17 noted, a White American in the lowest income bracket was just as likely to receive
18 refinancing approval as a Black American in the highest income bracket.

19 41. Wells Fargo's racial discrimination during the refinancing boom is
20 consistent with Wells Fargo's sordid history of racial discrimination in lending. In
21 2012, it agreed to pay \$184 million to settle claims with the Department of Justice
22 that the bank pushed Black and Hispanic homeowners to obtain subprime
23 mortgages, and then charged them higher fees and interest rates.³⁷

24 42. Several municipalities have sued Wells Fargo as well. In 2019, it
25 settled a lawsuit with the City of Philadelphia premised on allegations that it

26 _____
27 ³⁷ [https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-](https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief)
28 [fargo-resulting-more-175-million-relief](https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief).

1 purposefully made it difficult for minorities to refinance their mortgages.³⁸

2 43. Worse yet, despite harming Black homeowners by making it more
3 difficult to refinance their loans, Wells Fargo deceives the public by trumpeting its
4 supposed commitment to diversity, equity and inclusion. In its 2020 annual report,
5 Wells Fargo expressed its supposed commitment to “the concept of equity to our
6 diversity and inclusion efforts in recognition of the systemic and structural
7 challenges in our society that have contributed to disparities that exist today.”³⁹

8 44. In the same year that Wells Fargo denied a majority of Black
9 homeowners’ refinancing applications, the Wells Fargo CEO claimed that “the calls
10 for racial justice in 2020 reinforced the urgency of working to create a company
11 culture with broad representation in who we are, how we think, and how we make
12 decisions.”⁴⁰ However these words ultimately ring hollow, because it denied Black
13 homeowners refinancing at much higher rates than any other major lender in that
14 same year.

15 **B. Plaintiff Aaron Braxton is Harmed by Wells Fargo’s Race-Based** 16 **Discrimination**

17 45. Plaintiff Aaron Braxton purchased his home in South Los Angeles,
18 California, near the University of Southern California, in April 2000, through a
19 Wells Fargo home loan for \$139,500 (“First Loan”). This First Loan was insured
20 through the FHA. In 2005, after the price of the house appreciated, he took out a
21 second home equity line of credit loan, also from Wells Fargo (“Second Loan”). He
22 improved upon the property and built an accessory dwelling unit. Today, the home
23

24 ³⁸ [https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-](https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-litigation/)
25 [litigation/](https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-litigation/).

26 ³⁹ 2020 Annual Report, at 17; accessible at

27 [https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-](https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2020-annual-report.pdf)
28 [reports/2020-annual-report.pdf](https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2020-annual-report.pdf).

⁴⁰ *Id.* at 16.

1 is worth approximately \$800,000, as it was in 2019. In or about August 2019, Mr.
2 Braxton began the process of applying to refinance his two Wells Fargo loans to
3 take advantage of reduced interest rates. At the time, he owed \$185,000 on both his
4 Wells Fargo loans and paid a 6% interest rate on both loans, multiple percentage
5 points higher than the average refinance rate at the time.

6 46. When Mr. Braxton initially applied to refinance his First Loan, Wells
7 Fargo repeatedly asked him to resubmit paperwork because Wells Fargo
8 representatives claimed the paperwork was either missing or lost. Wells Fargo
9 representatives also continually took weeks and weeks to issue or reply to
10 correspondence. Mr. Braxton thereafter began the process of refinancing his Second
11 Loan and was confronted with the same delays.

12 47. Frustrated by the delays and because he was continuing to pay a higher
13 mortgage rate while his applications were pending, Mr. Braxton regularly contacted
14 his loan officers and other Wells Fargo personnel to ask about the status of his
15 applications.

16 48. After months of frustrating encounters with Wells Fargo personnel, Mr.
17 Braxton decided to call HUD. A HUD representative informed Mr. Braxton that
18 they would be contacting Wells Fargo. The very next day, Wells Fargo approved
19 the refinancing of Mr. Braxton's federally backed FHA home loan, approximately
20 nine months after he began the process.

21 49. Eventually, around October 2020, Wells Fargo finally approved a
22 refinancing of his Second Loan. However, despite the contact from HUD, which
23 presumably prompted it to act on Mr. Braxton's First Loan, Wells Fargo continued
24 its discrimination through race-based application delays. It continued to claim that
25 paperwork needed to process the Second Loan was missing, even though Mr.
26 Braxton had already provided the paperwork. At one point, after having sent a
27 notary to his home to finalize some paperwork, Wells Fargo informed Mr. Braxton
28 that the notary had lost the paperwork and he needed to complete some forms again.

50. All told, Mr. Braxton submitted four applications because Wells Fargo kept losing them. During the 16 months that his applications were pending, Mr. Braxton continued to pay the higher original mortgage rates instead of the lower refinanced rates he was seeking (and ultimately proven entitled to). However, unbeknownst to Mr. Braxton, in the end the rate he received for his refinancing, while lower than his original rate, was much higher than the fair market rate received by similarly situated non-Black applicants.

V. CLASS ALLEGATIONS

51. Plaintiff Aaron Braxton brings this action on behalf of himself and a potential class of similarly situated Black Americans.

52. Each and every claim alleged in this case is also alleged on behalf of every member of the Class.

A. Class Definition

53. The Class includes all Black persons in the United States who, from January 1, 2018 through the present (the “Class Period”), submitted an application to refinance their home mortgage through Defendants that was (i) processed at a rate slower than that of the average processing time of applications made by non-Black applicants; or (ii) whose applications were denied; or (iii) whose resulting refinance loans were made at higher interest rates as compared to similarly situated non-Black applicants. Excluded from the Class are Defendants and their employees, affiliates, parents, subsidiaries, and co-conspirators, whether or not named in this complaint, and the United States government.

54. Class certification is authorized under Federal Rule of Civil Procedure 23 and applies to claims for injunctive and equitable relief, including restitution, under Rule 23(b)(2), and for monetary damages under Rule 23(b)(3).

55. There are at least 13,000 members of the Class.

56. The number of persons who fall within the definitions of the Class are so numerous and geographically dispersed so as to make joinder of all members of

1 the Class or Subclass in their individual capacities impracticable, inefficient, and
2 unmanageable, and without class-wide relief, each member of the Class would
3 effectively be denied his, her, or their rights to prosecute and obtain legal and
4 equitable relief based on the claims and allegations averred in the Complaint.

5 57. Plaintiff, as detailed below, can fairly and adequately represent the
6 proposed Class. In the alternative, Plaintiff can act as the representative of the
7 below subclasses.

8 **B. Proposed Subclasses**

9 58. Additionally, or in the alternative, pursuant to Federal Rule of Civil
10 Procedure 23(c)(5), Mr. Braxton brings this action on behalf of the following
11 subclasses:

12 59. The Delayed Refinancing Subclass: All Black persons in the United
13 States who applied for refinancing from the Defendants during the class period and
14 whose applications processed at a rate slower than that of the average processing
15 time of applications made by non-Black applicants.

16 60. The Higher Rate Subclass: All Black persons in the United States who
17 applied for refinancing from the Defendants during the class period and whose
18 refinancing applications were eventually approved, but at a higher interest rate than
19 prevailing market rates based on their creditworthiness.

20 **C. Numerosity and Ascertainability**

21 61. **Numerosity.** While the exact numbers of the members of the Class
22 and Subclasses are unknown to Plaintiff at this time, membership in the Class and
23 Subclasses may be ascertained from the records maintained by Wells Fargo. At this
24 time, Plaintiff is informed and believes that the Class includes hundreds of
25 thousands of members and the Subclasses includes tens of thousands of members.
26 Therefore, the Class and Subclasses are sufficiently numerous that joinder of all
27 members of the Class and Subclasses in a single action is impracticable under Rule
28 23(a)(1) of the Federal Rules of Civil Procedure, and the resolution of their claims

1 through a class action will be of benefit to the parties and the Court.

2 62. **Ascertainability.** The names and addresses of the members of the
3 Class and Subclasses are contained in Wells Fargo's records. Notice can be
4 provided to the members of the Class and Subclasses through direct mailing, email,
5 publication, or otherwise using techniques and a form of notice similar to those
6 customarily used in consumer class actions arising under State and Federal law.

7 **D. Commonality and Predominance**

8 63. This matter involves common questions of law and fact which
9 predominate over any question solely affecting individual Class Members.

10 64. The common questions of law and fact include, but are not limited to:

- 11 • Whether Defendant systematically discriminated against Class
12 Members on account of their race;
- 13 • Whether Black applicants' home mortgage and refinance
14 applications were processed at a rate slower than that of the
15 average processing time of applications made by non-Black
16 applicants;
- 17 • Whether Black applicants' home mortgage and refinance
18 applications were denied when the score of a similarly situated
19 non-Black applicant would be approved;
- 20 • Whether Black applicants' resulting refinance loans were made
21 at higher interest rates as compared to similarly situated non-
22 Black applicants;
- 23 • Whether Defendant selected disproportionately white areas for
24 rapid refinancing evaluation and disproportionately Black areas
25 for increased scrutiny;
- 26 • Whether Defendants' underwriting algorithms and machine
27 learning programs were racially biased and led to unfairly
28 discriminatory credit policies that harmed Black refinancing
29 applicants.

30 65. **Predominance.** Class action status is warranted under Rule 23(b)(3) of
31 the Federal Rules of Civil Procedure because questions of law or fact common to the
32 members of the Class and Subclasses predominate over any questions affecting only
33 individual members. The interests of the members of the Class and Subclasses in
34 individually controlling the prosecution of separate actions are theoretical and not

1 practical. Prosecution of this action through multiple Class Representatives would
2 be superior to individual lawsuits. Plaintiff is not aware of any difficulty which will
3 be encountered in the management of this litigation which should preclude its
4 maintenance as a class action.

5 **E. Typicality and Adequacy**

6 66. Plaintiff Aaron Braxton's claims are typical of the other Class
7 Members' claims because all Class Members were injured in the same manner as a
8 result of substantially similar conduct by Wells Fargo.

9 67. Mr. Braxton is an adequate Class Representative because his interests
10 do not conflict with the interests of the other members of the Class and Subclasses
11 he seeks to represent. Plaintiff has retained counsel competent and experienced in
12 complex class action litigation, and Plaintiff intends to prosecute this action
13 vigorously. The Class and Subclasses' interests will be fairly and adequately
14 protected by Plaintiff and his counsel.

15 **F. Superiority**

16 68. A class action is the superior method for the fair and efficient
17 adjudication of this matter, because the damages and other harms suffered by
18 Plaintiff and other Class Members are small compared to the burden and expense of
19 individual litigation. Thus, it would be impractical, if not impossible, for individual
20 plaintiffs to seek redress against Defendants for the harms suffered.

21 69. Individual litigation of these harms would also be inefficient for the
22 court system, and would create a risk of inconsistent or contradictory rulings and
23 judgments.

24 70. No unusual circumstances exist that would make this matter more
25 difficult to manage than a typical class action. Individualized damages figures can
26 be mathematically computed by collecting data about the length of each Class
27 Member's delay and the differential between the interest rates they ultimately
28 received versus the prevailing market rate based on race-neutral variables such as

1 debt-to-income ratio, loan-to-value ratio, and credit score.

2 **G. Injunctive Relief**

3 71. Plaintiff also seeks to represent a class under Rule 23(b)(2) seeking
4 injunctive relief forcing Wells Fargo to cease and desist its current discriminatory
5 practices.

6 **COUNT I**

7 **VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

8 **15 U.S.C. § 16901, *et seq.***

9 72. Plaintiff, on behalf of himself and all those similarly situated, realleges
10 each and every paragraph above and incorporates them by reference as though fully
11 stated herein.

12 73. The Equal Credit Opportunity Act makes it unlawful for a creditor to
13 discriminate against any applicant with respect to any aspect of a credit transaction
14 on the basis of race.

15 74. The Equal Credit Opportunity Act applies to applications for
16 refinancing, like those of the Plaintiff and others similarly situated. Plaintiff applied
17 for credit by seeking to refinance his home loans.

18 75. Defendants are creditors because they regularly extend, renew, and
19 continue issuances of credit.

20 76. Defendants' consistent delays, roadblocks, feigned difficulties, and
21 sometimes denials of applications for refinancing submitted by Black Americans
22 constitute race-based discrimination forbidden by the Equal Credit Opportunity Act.

23 77. Plaintiff and all those similarly situated were harmed by Defendants'
24 conduct, including but not limited to harm in the form of higher interest rates paid
25 while applications were pending, higher interest rates paid upon a delayed approval,
26 or from a denied application.

27 78. On behalf of himself and the Class he seeks to represent, Plaintiff
28 requests the relief set forth below.

COUNT II

**RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT
OF 1968, 42 U.S.C. § 3601, *et seq.***

79. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

80. The Fair Housing Act makes it unlawful, in residential real estate transactions, such as refinancing, to discriminate against designated classes of individuals.

81. Plaintiff and others similarly situated sought to engage in residential real estate transactions with the Defendants.

82. Plaintiff and others similarly situated are Black Americans and therefore members of a protected class under the Fair Housing Act.

83. Defendants refused to transact business with Plaintiff and others similarly situated when they refused to approve refinancing applications on the same timeline as the applications made by other parties with similar qualifications that were not members of the protected class, by causing applicants to withdraw applications due to roadblocks and feigned difficulties, or by denying refinancing applications. As noted, Defendants approved fewer than half of Black homeowners' refinancing applications in 2020 while approving 71% of the applications of White homeowners.

84. Defendants refused to transact business with Plaintiff and those similarly situated during the Class Period and at the same time did transact business with non-Black homeowners with similar qualifications.

85. Plaintiff and those similarly situated were injured by Defendants' refusal to transact business with them because they paid application fees for refinancing applications that were delayed or denied, because they continued to pay higher interest rates while their delayed applications were pending, because they were provided with higher interest rates than other homeowners with similar

1 qualifications, and/or because their applications were denied.

2 **COUNT III**

3 **RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

4 86. Plaintiff realleges each and every paragraph above and incorporates
5 them by reference as though fully stated herein.

6 87. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same
7 right to make and enforce contracts, regardless of race. The term “make and
8 enforce” contracts includes the making, performance, modification, and
9 terminations of contracts, as well as all of the other aspects of a contractual
10 relationship.

11 88. By seeking to refinance their home loans and submitting an application
12 to Defendants, Plaintiff and others similarly situated sought to “make and enforce”
13 contracts with the Defendants.

14 89. Plaintiff and those similarly situated were denied their right to make
15 and enforce contracts when Defendants refused to provide refinancing on the same
16 terms as they offered to members of a different race, by delaying or frustrating the
17 applications process, and/or by denying the applications.

18 90. Plaintiff and those similarly situated were harmed by Defendants’
19 denial of their rights to make and enforce contracts.

20 **COUNT IV**

21 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT,**
22 **CALIFORNIA CIVIL CODE §51**

23 91. Plaintiff realleges each and every paragraph above and incorporates
24 them by reference as though fully stated herein.

25 92. The Unruh Civil Rights Act provides that all persons within the State of
26 California are free and equal no matter their race and are entitled to full and equal
27 treatment in all business establishments.

28 93. The Unruh Civil Rights Act thus prohibits discrimination of any kind

1 against any person in any business establishment.

2 94. Defendants are business establishments under the Unruh Civil Rights
3 Act.

4 95. Plaintiff and other individuals similarly situated were denied full and
5 equal treatment under the Unruh Civil Rights Act when Defendants refused to offer
6 them refinancing terms on the same terms as individuals who were not Black
7 Americans.

8 96. Plaintiff and other individuals similarly situated were harmed by
9 Defendants' refusal to transact business with them because they paid application
10 fees for refinancing applications that were delayed or denied, because they
11 continued to pay higher interest rates while their delayed applications were pending,
12 because they were provided with higher interest rates than other homeowners with
13 similar qualifications, and/or because their applications were denied.

14 **COUNT V**

15 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

16 97. Plaintiff realleges each and every paragraph above and incorporates
17 them by reference as though fully stated herein.

18 98. The California Unfair Competition Law ("UCL") forbids "unlawful,
19 unfair or fraudulent" conduct in connection with business activity.

20 99. Defendants' business offering refinancing of existing loans is a
21 business activity under the UCL.

22 100. Plaintiff and others similarly situated are "persons" under the UCL.

23 101. Defendants' conduct described herein constitutes unlawful competition,
24 as in the course of engaging in the business acts described above, it engaged in
25 conduct that constituted a predicate violation of the laws identified herein, namely
26 the Equal Credit Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, and the
27 Unruh Civil Rights Act.

28 102. Defendants' conduct described herein constitutes unfair competition

1 under the UCL, as their practices are likely to deceive the public by informing the
 2 public of an alleged commitment to diversity and equality, but instead using hidden
 3 business practices designed to deny, delay and refuse the refinancing of loans of
 4 Black Americans, and subjecting those that are approved, to unfavorable terms. As
 5 there is no legitimate justification for these practices, which have a
 6 disproportionately negative impact on the public, in comparison to any fair business,
 7 purpose Defendants' practices are unfair as defined under the UCL.

8 103. Defendants' conduct described herein constitutes fraudulent
 9 competition under the UCL, as they advertise and other wise state that they are
 10 committed to diversity and equality, and will fairly and quickly process the
 11 refinancing applications of all applicants, but instead use hidden business practices
 12 designed to deny, delay and refuse the refinancing of loans of Black Americans, and
 13 subjecting those that are approved, to unfavorable terms. These business practices
 14 are likely to deceive the public, and thus are fraudulent.

15 104. Plaintiff and those similarly situated were injured by Defendants'
 16 refusal to transact business with them because they paid application fees for
 17 refinancing applications that were delayed or denied, because they continued to pay
 18 higher interest rates while their delayed applications were pending, because they
 19 were provided with higher interest rates than other homeowners with similar
 20 qualifications, and/or because their applications were denied.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff respectfully requests that this Court provides the
 23 following relief:

- 24 a. Certify the 23(b)(2) and 23(b)(3) classes outlined above;
- 25 b. Designate Plaintiff as a Class Representative and designate the
 26 undersigned counsel as lead Class Counsel;
- 27 c. Find that Defendants' acts described herein violate the Equal Credit
 28 Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, the Unruh

Civil Rights Act, and the California UCL;

- d. Find that Defendants have engaged in a pattern and practice of racial discrimination resulting in the harm to Plaintiff and class members described above;
- e. Award Plaintiff and all others similarly situated restitutionary relief, together with compensatory and punitive damages;
- f. Award Plaintiff and all others similarly situated injunctive relief by ordering Defendants to stop the discriminatory practices described herein;
- g. Award Plaintiff and all others similarly situated prejudgment interest and attorney's fees, costs, and disbursements; and
- h. Award Plaintiff and all others similarly situated such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

DATED: March 18, 2022

ELLIS GEORGE CIPOLLONE
O'BRIEN ANNAGUEY LLP

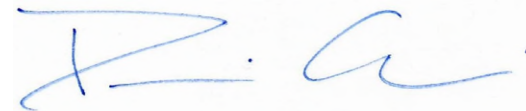
Dennis S. Ellis

Noah S. Helpen

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Joseph Kiefer (*pro hac vice* forthcoming)

Stefan Bogdanovich



By: _____

Dennis S. Ellis

Attorneys for Plaintiff Aaron Braxton and all
other similarly situated Plaintiffs

1 DATED: March 18, 2022

FRANK, SIMS & STOLPER LLP

2 Jason M. Frank

3 Scott H. Sims

4 Andrew D. Stolper

5
6 By: /s/ Jason Frank

7 Jason Frank

8 Attorneys for Plaintiff Aaron Braxton and all
other similarly situated Plaintiffs

9 **Attestation under N.D. Cal. L.R. 5-1(h)**: the ECF filer of this document attests that
10 all of the other signatories have concurred in the filing of the document, which shall
serve in lieu of their signatures on the document.

EXHIBIT B

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Attorneys for Plaintiffs Aaron Braxton,
Gia Gray, Bryan Brown, Paul Martin, on
behalf of themselves and all others
similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON BRAXTON, GIA GRAY,
BRYAN BROWN AND PAUL
MARTIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a
Delaware corporation; WELLS FARGO
HOME MORTGAGE, INC., a
Delaware corporation; WELLS FARGO
& CO., a Delaware corporation.

Case No. 4:22-cv-01748-KAW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**1. VIOLATION OF THE EQUAL
CREDIT OPPORTUNITY ACT,
15 U.S.C. § 1691, *ET SEQ.*
2. RACE DISCRIMINATION IN
VIOLATION OF THE FAIR
HOUSING ACT OF 1968, 42
U.S.C. § 3601, *ET SEQ.***

Defendants.

**3. RACE DISCRIMINATION IN
VIOLATION OF 42 U.S.C. § 1981
4. VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT,
CALIFORNIA CIVIL CODE § 51
5. VIOLATION OF THE
CALIFORNIA UNFAIR
COMPETITION LAW**

DEMAND FOR JURY TRIAL

Plaintiffs Aaron Braxton, Gia Gray, Bryan Brown and Paul Martin, individually and as representatives of a nationwide class of Black applicants for home mortgage refinancing through Wells Fargo and its related entities (collectively “Plaintiffs” or the “Class”), allege as follows:

I. NATURE OF ACTION

1. The benefits of homeownership have long been the cornerstone of the American Dream—allowing citizens to accumulate wealth through access to credit, generating equity, and reducing housing costs.¹

2. However, the benefits of homeownership have for far too long been unattainable for a disproportionate number of Black Americans, and more difficult for Black Americans to maintain once achieved. Historically, Black Americans have been repeatedly and systematically denied access to the financial benefits of homeownership through the use of pernicious and pervasive race-based exclusions. These denials included, for example, the Federal Housing Administration’s refusal to insure mortgages in and near Black neighborhoods—a practice now referred to as “redlining”—at the same time that the FHA subsidized builders who mass-produced entire subdivisions made for White Americans.

¹ <https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=1c78499623b5>.

1 3. The passage of civil rights legislation in the 1960s was supposed to fix
2 that historical injustice, eliminate race-based gatekeeping practices like redlining
3 and restrictive covenants while righting this long-standing American wrong. For
4 many homeowners seeking a first or refinanced mortgage with some banks, it did.
5 For many Black Americans, however, discrimination in the realm of home
6 ownership remains a vestige of the country's prejudice narrative.

7 4. Over the past few years, historically low interest rates spawned an
8 unprecedented opportunity for homeowners to refinance their home mortgages.
9 Refinanced mortgages allow homeowners to reduce their monthly payments (as well
10 as the overall interest due during the life of their loan) while still amassing equity in
11 their homes. Not surprisingly, millions of homeowners across the nation sought to
12 reduce their payments through refinancing.

13 5. Unfortunately, Black homeowners who sought to refinance through the
14 Defendants in this case—Wells Fargo Bank, N.A., Wells Fargo & Co., and Wells
15 Fargo Home Mortgage (collectively “Defendants” or “Wells Fargo”)—were
16 disproportionately denied refinance applications or, even if ultimately approved,
17 faced unjustified delays in the processing of their applications.

18 6. Wells Fargo *denied the applications of over 50%* of the Black
19 Americans seeking to refinance in 2020, and *denied the applications of just under*
20 *50%* of the Black Americans seeking to refinance in 2021. No other major lending
21 institution refused to refinance the homes of Black Americans at such stunning
22 rates.

23 7. The numbers associated with Defendants' misconduct tell a shameful
24 story, without any legitimate explanation. Data from eight million refinancing
25 applications from 2020 reveal that “the highest-income Black applicants [had] an
26 approval rate about the same as White borrowers in the lowest-income bracket.”²

27
28 ² *Id.*

1 White refinancing applicants earning between \$0 and \$63,000 a year were *more*
 2 *likely* to have their refinancing application approved by Wells Fargo than Black
 3 refinancing applicants earning between \$120,000 and \$168,000 a year.³ Overall, in
 4 2020, Wells Fargo rejected a *majority* of all the completed applications submitted
 5 by Black homeowners.⁴ And because Wells Fargo designed an application process
 6 that is disproportionately difficult for Black homeowners to complete, 27% of all
 7 Black homeowners who began a refinance application with Wells Fargo withdrew
 8 it.⁵ When this group of Black homeowners who were unable to complete the
 9 refinance process due to discriminatory barriers are added to the total pool of Black
 10 homeowner refinance applicants, just one-third of the Black homeowners who
 11 applied for a refinance loan with Wells Fargo were successful.

12 8. In 2020—at the height of the refinancing boom, when millions of
 13 Americans benefitted from the historically low interest rate environment—Wells
 14 Fargo approved 47% of all applications by Black homeowners (meaning that Wells
 15 Fargo rejected the majority of applications from Black homeowners), whereas all
 16 other lenders approved 71% of all applications by Black homeowners.⁶ In 2020, no
 17 other lending institution rejected a majority of Black homeowners’ applications for
 18 refinancing.⁷

19 9. Wells Fargo was the only major lender in the United States that
 20 approved a smaller share of refinancing applications from Black homeowners in
 21

22 ³ *Id.*

23 ⁴ *Id.*

24 ⁵ *Id.*

25 ⁶ *Id.*

26 ⁷ [https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)
 27 [refinancing/](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/).
 28

2020 than it had in 2010.⁸

10. The story in 2021 was the same, with Wells Fargo approving a much lower percentage of Black homeowner applicants than any other lender.⁹ Wells Fargo approved only 58% of Black applicants compared to other lenders, which approved 74% of Black homeowner applicants.¹⁰ And the disparity between Black and White refinance approval rates was 21% at Wells Fargo, nearly double the disparity (13%) for all other for other lenders.¹¹ And while Wells Fargo's Black homeowner refinancing approval rate improved slightly from 2020, the same was true at all other lenders, due to broader economic conditions.¹² By comparison, other major lenders approved much higher rates of Black homeowner refinancing applicants in 2021: JP Morgan Chase & Co. approved 87% of Black homeowner applicants (only 6% less than White applicants), Rocket Mortgage LLC approved 81% of Black homeowner applicants (only 7% less than White applicants), and Bank of America Corporation approved 75% of Black homeowner applicants (only 11% less than White applicants).¹³

11. Overall, the data released under the federal Home Mortgage Disclosure Act shows unequivocally that Wells Fargo rejects a disproportionate number of Black homeowners' refinancing applications.¹⁴ Wells Fargo also makes the

⁸ *Id.*

⁹ <https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ <https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan->

1 refinancing application process more difficult for Black homeowner applicants than
 2 others on a national scale.¹⁵ And Wells Fargo customers report loan officers stating
 3 that Wells Fargo’s underlying refinance calculation tools consider certain “areas”
 4 with large Black populations to be ineligible for rapid valuations.¹⁶ Black
 5 homeowner applicants are further subjected to delays, feigned mistakes, and other
 6 obstacles, leading many Black Americans to withdraw their requests for refinancing
 7 and leading others to wait indefinitely while Wells Fargo refuses to act upon their
 8 applications.

9 12. In light of this, Wells Fargo’s stated commitment to “help[] ensure that
 10 all people across our workforce, our communities, and our supply chain feel valued
 11 and respected and have equal access to resources, services, products, and
 12 opportunities to succeed”¹⁷ rings hollow. Instead, Wells Fargo pervasively denies
 13 Black homeowners’ refinancing applications and consistently delays the
 14 applications it does not deny, in many cases ultimately forcing Black homeowners
 15 into foreclosure.¹⁸

16 13. Core responsibility for Wells Fargo’s discriminatory treatment of Black
 17 homeowner applicants lies with its decision to employ centralized, universal, race-
 18 infected lending algorithms without correction to differentially assess, delay and
 19 ultimately reject refinancing applications.

20 14. Used properly, automated underwriting technology helps individual
 21

22 _____
 refinancing/.

23 ¹⁵ *Id.*

24 ¹⁶ *Id.*

25 ¹⁷ <https://www.wellsfargo.com/about/diversity/diversity-and-inclusion/>.

26 ¹⁸ [https://www.nclc.org/images/pdf/special_projects/covid-
 27 19/IB_Covid_Black_Forbearance_Foreclosure.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Covid_Black_Forbearance_Foreclosure.pdf).

1 loan officers who are properly trained and familiar with the legal environment in
2 which banks operate make sound, individualized underwriting decisions that protect
3 the interests of borrowers, banks, investors, insurers and the federal government,
4 taking into account race-neutral data points and employing formulae based on those
5 data points to decide whether or not the proposed loan is in the best interest of the
6 bank and the borrower.

7 15. But that is not how Wells Fargo utilized its automated underwriting
8 technology. Quite the contrary: confidential informants with knowledge of Wells
9 Fargo's refinance operations confirm that the onset of the COVID-19 pandemic led
10 Wells Fargo to jettison or otherwise ignore well-established internal fair lending
11 checks and balances in favor of implementing a centralized, "pioneering automated
12 underwriting" system—sometimes referred to as CORE—without sufficient, or
13 sometimes any, human supervision or involvement.

14 16. These witnesses describe troubling facts whereby, as COVID-19 hit,
15 multiple loan processors and underwriters were terminated or otherwise left the
16 bank's residential lending operations and were not replaced, and, instead, the CORE
17 pioneering automated underwriting system was increasingly centralized to facilitate
18 at-home work by originators, processors, and underwriters. According to these
19 same witnesses, the coding and machine learning endemic to the CORE algorithmic
20 underwriting platform were—byte by byte—stuffed chock-full of numerous Wells
21 Fargo-generated geographic, demographic, race-stratified liquidity and appraisal and
22 other "overlays" that Wells Fargo knew served no legitimate underwriting basis but,
23 instead, functioned as signals for race discrimination in Wells Fargo's residential
24 refinance decisions.

25 17. These and other "overlays" pervasively infecting Wells Fargo's CORE
26 algorithms—which become even more invidious with each successive denial that
27 taught the algorithm these denials were appropriate—ultimately serve Wells Fargo's
28 purpose of segregating the creditworthiness of prospective applicants based on their

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1 race, and differentiate Wells Fargo’s assessments from the other major lending
2 institutions.

3 18. Confidential informants with knowledge of Wells Fargo’s recent
4 lending operations also specify just how heavily Wells Fargo relied on its
5 systematically racist algorithmic underwriting decisions and increasing lack of an
6 individualized human element in Wells Fargo’s process. As but one example, Wells
7 Fargo loan processors supposedly responsible for shepherding applications through
8 the bank’s systems—typically expected to process 30 applications per month but
9 forced by Wells Fargo’s CORE platform to process more than 50 and sometimes
10 nearly 100 per month—were rendered powerless to supervise the process, override
11 the algorithm, or otherwise intervene on the side of basic compliance with the fair
12 housing laws.

13 19. Some of these same confidential informants have further confirmed
14 that, over and over during the COVID-19 pandemic and afterwards, they referred
15 denied Black homeowner applicants to competitor financial institutions that swiftly
16 approved the applications and asked, because the applications should have resulted
17 in “easy approvals” for Wells Fargo, how Wells Fargo could have denied them.

18 20. Wells Fargo propounds its discriminatory treatment of Black
19 homeowners by incorporating, without adjustment, appraisals that have been shaped
20 by years of race-based valuation standards or appraisals that are based on race-based
21 criteria that have markedly affected Black homeowners into its analysis. Homes in
22 majority Black neighborhoods are worth an average of 23% less than homes in
23 neighborhoods with “very few or no Black residents” and similar home quality.¹⁹
24

25 ¹⁹ [https://www.brookings.edu/research/devaluation-of-assets-in-black-](https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sendto_newsletter&utm_test_business&stream=top#_ga=2.213288596.1000901909.1649553887-1080662765.1648140872)
26 [neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sen](https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sendto_newsletter&utm_test_business&stream=top#_ga=2.213288596.1000901909.1649553887-1080662765.1648140872)
27 [dto_newsletter&utm_test_business&stream=top#_ga=2.213288596.1000901909.16495538](https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sendto_newsletter&utm_test_business&stream=top#_ga=2.213288596.1000901909.1649553887-1080662765.1648140872)
28 [87-1080662765.1648140872](https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sendto_newsletter&utm_test_business&stream=top#_ga=2.213288596.1000901909.1649553887-1080662765.1648140872).

1 The disparities in home appraisals leave Black homeowners at a disadvantage where
 2 below market home appraisals limit refinancing options.

3 21. In September 2021, the Federal Home Loan Mortgage Corporation
 4 released the results of a five-year study based on more than 12 million appraisals.²⁰
 5 The study found that “Appraisers’ opinions of value are more likely to fall below the
 6 contract price in Black and Latino census tracts, and the extent of the gap increases
 7 as the percentage of Black or Latino people in the tract increases.”²¹ Wells Fargo’s
 8 practice of engaging in appraisal discrimination has not only led to delays in the
 9 application process for Black homeowners but has forced those who received under-
 10 market appraisals from Wells Fargo to abandon the process with Wells Fargo and
 11 turn elsewhere.

12 22. Plaintiffs are the unfortunate victims of Wells Fargo’s pervasive
 13 misconduct: Black homeowners from across the country whose applications to
 14 refinance their home loans have been systematically delayed or denied because
 15 Wells Fargo’s CORE algorithm operates to discriminate against them. Tens of
 16 thousands have been victimized by Wells Fargo’s intentional, knowing and
 17 systematic race discrimination, violating the contractual, commercial and civil rights
 18 of Class members and causing millions (and perhaps even billions) of dollars in
 19 damages to the Nationwide Class. Individually and as representatives of the Class
 20 (defined below), Plaintiffs bring this action to enjoin the present day redlining by
 21 Wells Fargo through its discriminatory practices and to make good to the Class all
 22 damages resulting from Defendants’ violations of civil rights laws and to restore to
 23 the Class any amounts to which they otherwise would have been entitled, together
 24 with such other equitable and remedial relief as the Court may deem appropriate.

25
 26 _____
 27 ²⁰ <https://www.freddiemac.com/research/insight/20210920-home-appraisals>.

28 ²¹ *Id.*

II. JURISDICTION AND VENUE

23. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332(d), and 1343, because the Plaintiffs assert federal causes of action, because Plaintiffs assert civil rights causes of action, because at least one member of the Class is a citizen of a different state than all Defendants, and because the amount in controversy exceeds \$5,000,000.

24. Personal jurisdiction is appropriate over Defendants because Wells Fargo Bank, N.A. transacts business in the State of California and has its principal place of business in San Francisco, California, Wells Fargo Home Mortgage, Inc. originates loans to California customers from its California offices and maintains a systematic and continuous presence in the State, Wells Fargo & Co. has its corporate headquarters in San Francisco, California.

25. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because Wells Fargo Bank, N.A. resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district, Wells Fargo Bank, N.A.'s principal place of business is in this district, and Wells Fargo & Co. has its corporate headquarters in this district.

III. PARTIES

Aaron Braxton

26. Plaintiff Aaron Braxton, who is a Black homeowner, is a natural person and a citizen of the State of California and resides in Los Angeles, California.

27. Mr. Braxton is one victim of Wells Fargo's discriminatory policies. He is a financially successful and eminently creditworthy Black playwright, performer, and a math and science teacher with a Master's degree from the University of Southern California.²² He has authored several award-winning plays, including *DID*

²² https://www.imdb.com/name/nm1347914/bio?ref_=nm_ov_bio_sm.

1 *YOU DO YOUR HOMEWORK?*, which broke the Beverly Hills Playhouse's record
2 for longest running play (nine months).²³ He has also written several films and
3 television pilots, and acted in several film, television, and theatre projects.²⁴

4 28. In addition, for two decades, Mr. Braxton was a Wells Fargo mortgage
5 customer. He purchased his home in 2000, in a historically Black neighborhood
6 located in South Los Angeles near the campus of the University of Southern
7 California, and secured his property with a Wells Fargo home mortgage insured by
8 the Federal Housing Administration (FHA). Mr. Braxton always made his mortgage
9 payments and bills on time, and he had a good credit score.

10 29. Yet despite his successful career and his creditworthiness, when Mr.
11 Braxton sought to refinance his home mortgage loans in August of 2019, Wells
12 Fargo consistently obstructed his ability to refinance his loans. Despite favorable
13 loan-to-value metrics and his personal history with the institution, Wells Fargo was
14 focused more on his race and the location of his home within a historically Black
15 Los Angeles neighborhood, and used the fact of his race and the location of his
16 home to delay, obstruct and deny him the full benefits of historically low home
17 mortgage interest rates. Wells Fargo did this even though, having paid his loans for
18 more than 18 years, Mr. Braxton had equity in his home far greater than the amount
19 remaining on his FHA-secured loan.

20 30. Mr. Braxton was given the runaround to such an extent that it took him
21 over nine months to refinance his federally backed mortgage loan (and 12 months to
22 refinance his home equity loan) at an above-market interest rate of around 4%. This
23 was after various Wells Fargo representatives kept telling him they lost his
24 paperwork, made incomplete inquiries and needed to request more information,
25 delayed their responses, and even placed him into an unsolicited debt-trap deferred

26 _____
27 ²³ *Id.*

28 ²⁴ *Id.*

1 payment program without his permission. It was only after Mr. Braxton notified the
2 Department of Housing and Urban Development (“HUD”) that Wells Fargo
3 approved the refinancing of his federally backed FHA loans (indeed, Wells Fargo
4 approved the application the very next day). Of course, for the prolonged period
5 that Mr. Braxton was waiting for Wells Fargo to refinance his loans, he was paying
6 the higher rates associated with his original loans.

7 Gia Gray

8 31. Plaintiff Gia Gray, who is a Black homeowner, is a natural person and a
9 citizen of the State of California and resides in Danville, California.

10 32. Mrs. Gray is another victim of Wells Fargo’s discriminatory policies.
11 Mrs. Gray is a physician, as is her husband. Both are employed and both,
12 individually, are in the top quintile of income earners. The same was true when they
13 applied to refinance their loans with Wells Fargo. Mrs. Gray’s FICO score is above
14 800.

15 33. The Grays own three homes. Their primary residence is in Danville,
16 California, a predominately White area. The couple also own income properties in
17 Stockton, California and Chicago, Illinois that are more diverse areas. The couple
18 had Wells Fargo mortgages for their three homes, and, save for a balance of
19 approximately \$1,000 on a credit card, the couple has and had no other debt. The
20 couple never missed a mortgage payment and always paid on time. They began the
21 refinancing process for their homes in February 2020.

22 34. The Grays were only able to refinance the Danville, California
23 property—in the predominately White area—after four months. Their loan officer
24 was located in Walnut Creek, California, another predominately White area, and he
25 actually took time out of his day to visit their multimillion-dollar home in Danville
26 in-person to sign refinancing documentation. Even still, Wells Fargo kept asking
27 the Grays to provide additional information, and even contacted the Human
28 Resources department at Mrs. Gray’s office.

36. Plaintiff Bryan Brown, who is a Black homeowner, is a natural person
and a citizen of the State of Connecticut and resides in Bristol, Connecticut.

19 38. Mr. Brown is a long-time Wells Fargo mortgage customer. Having
20 purchased his multi-unit home in December 2010 with a Wells Fargo home
21 mortgage, he has always made his mortgage payments, paid his bills on time, and
22 maintained a good credit score.

26 40. Despite his investment properties, longstanding employment, and
27 creditworthiness, when Mr. Brown sought to refinance his home mortgage, Wells
28 Fargo subjected him to long periods of nonresponsiveness, arbitrary requests for

1 additional documents, and multiple calls to his employer requesting verification of
2 his employment. Despite favorable loan-to-value metrics and his personal history
3 with the institution, Wells Fargo denied Mr. Brown's application to refinance after a
4 four-month runaround. Wells Fargo did this even though, having paid his loan for
5 more than ten years, Mr. Brown had equity in his home that was almost equal to the
6 amount remaining on his loan.

7 41. To this day, Mr. Brown's interest rate remains at 4.75%.

8 Paul Martin

9 42. Plaintiff Paul Martin, who is a Black homeowner, is a natural person
10 and a citizen of the State of California and resides in Los Angeles, California.

11 43. Mr. Martin has been a Hollywood entertainment executive at Sony
12 Pictures for 14 years. In 2020, Paul Martin sought to refinance his home in the
13 Ladera Heights neighborhood of Los Angeles, which has a higher proportion of
14 affluent Black residents than most Los Angeles neighborhoods. His multimillion-
15 dollar home was previously owned by WNBA superstar Lisa Leslie and NBA player
16 Aaron Afflalo.

17 44. But Wells Fargo refused to refinance Mr. Martin's loan. The bank
18 would not refinance his home unless he could get it appraised for \$2 million. Wells
19 Fargo's appraiser refused to come inside Mr. Martin's home, and appraised it at just
20 shy of \$2 million based on comparisons with homes in less affluent Black-populated
21 neighborhoods, apparently conflating all areas with a high concentration of Black
22 residents. Mr. Martin went to another lender, who appraised the home at \$2.4
23 million and promptly refinanced his loan.

24 Wells Fargo Entities

25 45. Defendant Wells Fargo Bank, N.A. is a nationally chartered bank with
26 its principal place of business located in San Francisco, California, and is chartered
27 in Wilmington, Delaware. It has 19,234 employees across all its locations,
28 including several in the Northern District of California, and generates nearly \$70

1 billion in sales annually.

2 46. Defendant Wells Fargo Home Mortgage, Inc. is a home lending
3 company that is part of the “Wells Fargo banking family.” It operates about 725
4 mortgage stores nationally and originates and services one-to-four-family residential
5 first and junior-lien mortgages and home equity loans. On average, it originates
6 approximately \$300 billion worth of loans per year. It is incorporated in the State of
7 Delaware, and has its principal place of business in Des Moines, Iowa. Wells Fargo
8 Home Mortgage, Inc. originates loans to California customers from its California
9 office locations.

10 47. Defendant Wells Fargo & Co. is a nationwide, diversified financial
11 holding company and bank holding company incorporated in the State of Delaware
12 with its principal place of business in San Francisco, California. Wells Fargo
13 provides banking, insurance, investment, and mortgage and consumer finance
14 services through storefronts, the Internet, and other distribution channels across the
15 United States and internationally. It is the parent company of Wells Fargo Bank,
16 N.A.

17 IV. FACTUAL ALLEGATIONS

18 A. The History of Discrimination in Housing

19 48. This country has an unfortunate history of discrimination, and housing
20 discrimination has always been a large part of this historical discrimination.

21 49. In 1924, the National Association of Realtors Code of Ethics mandated
22 that a realtor should “never be instrumental in introducing into a neighborhood
23 members of any race whose presence will be clearly detrimental to any property
24 values in the neighborhood.”²⁵ In other words, realtors were instructed that it was
25 an ethical infraction to integrate neighborhoods.

26
27 ²⁵ [https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history)
28 [history](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history).

1 50. Pursuant to this policy and so many others like it, realtors and
2 developers would routinely designate specific properties to White Americans while
3 reserving properties in other areas for minority Americans. These designations
4 would be found in rules, restrictions, and covenants attached to the properties.

5 51. Legislation introduced during the New Deal purporting to help
6 homeowners nationwide, in fact, codified racism into housing. The Home Owners'
7 Loan Corporation and the Federal Housing Administration graded residential areas
8 from A-D, with A being the most likely to receive federal loan insurance, and D the
9 least. Areas with "Colored" and "Oriental" people were automatically given D
10 ratings.²⁶

11 52. Federal Housing Administration underwriting manuals issued in 1938
12 sought to present the "infiltration of inharmonious racial groups" and directed
13 underwriters to refuse to insure mortgages that would lead to "a change in social or
14 racial occupancy."²⁷

15 53. As observed above, California has long perpetuated these
16 discriminatory practices. In Los Angeles, which was a leader in the nation's
17 discriminatory segregation, a Black American in 1917 said "we were encircled by
18 invisible walls of steel. The whites surrounded us and made it impossible for us to
19 go beyond these walls."²⁸ In this era, Black Americans were excluded from living
20 in 95% of the houses in Los Angeles.²⁹

21
22 _____
23 ²⁶ *Id.*

24 ²⁷ [https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history)
25 [history.](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history)

26 ²⁸ [https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-](https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-pioneered)
27 [pioneered.](https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-pioneered)

28 ²⁹ *Id.*

1 54. In Oakland, racialized zoning and restrictive covenants directed 80% of
2 the city's Black population to West Oakland following World War II.³⁰ Redlining
3 made it impossible for these residents to obtain loans to improve their properties.
4 Instead of helping, the city eventually, in the 1960s, razed large swaths of West
5 Oakland, purportedly to build new homes, but the replacement projects languished
6 and most residents were simply forced from their homes with nowhere to go.³¹

7 55. Similarly, in the San Francisco area, homes from the 1930s included in
8 title reports restrictions that "no person of any other race other than the Caucasian or
9 white race" may own or occupy the property, except for "domestic servants of a
10 different race domiciled with the homeowner or tenant."³² Similar provisions would
11 often prohibit residents of "African, Mongolian, or Japanese" descent.³³

12 56. When a Black American would obtain one of these properties despite
13 the clauses, White neighbors would sue, and the courts would force the Black
14 Americans to leave their properties, cementing the discrimination.³⁴ Indeed, the
15 California Supreme Court specifically held in 1919 that Black Americans could own
16 houses with restrictive clauses, they just could not reside there.³⁵ While the states
17 no longer enforce these covenants, they still charge a fee to homeowners wishing to
18

19 _____
20 ³⁰ [https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history)
21 history.

22 ³¹ *Id.*

23 ³² [https://www.mercurynews.com/2019/02/26/for-whites-only-shocking-language-](https://www.mercurynews.com/2019/02/26/for-whites-only-shocking-language-found-in-property-docs-throughout-bay-area/)
24 found-in-property-docs-throughout-bay-area/.

25 ³³ *Id.*

26 ³⁴ *Id.*

27 ³⁵ [https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-](https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-pioneered)
28 pioneered.

1 strike them from their property records.³⁶

2 57. Even after the Civil Rights Act was passed, California adopted
3 Proposition 14, allowing for continued discrimination under the guise of freedom.
4 The proposition was ruled unconstitutional, but the state's residents had made clear
5 their position on discrimination in housing.³⁷

6 58. The pervasive discrimination against Black homeowners and those
7 wishing to become homeowners sadly persists to this day, and Wells Fargo's
8 treatment of Black homeowners seeking refinancing during the refinance boom that
9 took place over the last few years is just the latest attack on these long-maligned
10 citizens of this country.

11 **B. Wells Fargo Has an Established History of Discrimination**

12 59. Wells Fargo's discriminatory behavior described herein is completely
13 in line with Wells Fargo's history of discrimination in lending. Indeed, the genesis
14 of its latest discriminatory practices seems to have followed the end of the policies it
15 put in place after an earlier series of lawsuits.

16 60. In 2012, Wells Fargo agreed to pay \$184 million to settle claims with
17 the Department of Justice that the bank pushed Black and Hispanic homeowners to
18 obtain subprime mortgages and then charged them higher fees and interest rates.³⁸

19 61. In 2015, the City of Oakland filed suit against Wells Fargo over its
20 racially discriminatory banking practices in seeking to originate mortgage loans on
21 predatory terms in minority neighbors and then its "subsequent [refusal] to extend
22 credit to minority borrowers seeking to refinance previously issued unnecessarily

23 _____
24 ³⁶ <https://www.mercurynews.com/2019/02/26/for-whites-only-shocking-language-found-in-property-docs-throughout-bay-area/>.

25 ³⁷ *Id.*

26 ³⁸ <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief>.
27
28

1 expensive loans.”³⁹ And “when a minority borrower who previously received a
2 predatory loan sought to refinance the loan,” they “discover[ed] that Wells Fargo
3 refused to extend credit at all, or on equal terms as refinancing similar loans issued
4 to [W]hite borrowers.”⁴⁰ Even when refinancing applications were approved, the
5 loans turned from a “fixed-rate loan into an adjustable-rate loan that the lender
6 knows the borrower cannot afford should interest rates rise... the likely result of
7 such practices is to cause homeowners who are otherwise...comfortably making
8 payments on a modest existing mortgage, to be unable to make payment on a new,
9 unaffordable loan.”⁴¹

10 62. The City of Oakland also performed a decade-long regression analysis
11 of Wells Fargo loans in Oakland, which controlled for objective variables like
12 “credit history, loan to value ratio, and the ratio of loan amount to income.” The
13 City of Oakland found that, controlling for these factors, “an African-American
14 borrower is 2.583 times more likely to result in foreclosure than a more favorable
15 and less expensive loan issued to a [W]hite borrower in Oakland.”⁴² This
16 corroborated other national studies which found that Black American borrowers
17 were “124% more likely to receive a subprime refinance loan” than their White
18 counterparts.⁴³

19 63. Moreover, the City of Oakland alleged that Wells Fargo employed
20 systematic policies like “giving loan officers and others responsible for mortgage
21

22 ³⁹ *City of Oakland v. Wells Fargo Bank, N.A.*, 3:15-cv-04321, Dkt. No. 1, at 2 (N.D.
23 Cal. Sept. 21, 2015).

24 ⁴⁰ *Id.* at 4.

25 ⁴¹ *Id.* at 20.

26 ⁴² *Id.* at 20-21.

27 ⁴³ *Id.* at 15.

1 lending large financial incentives to issue loans to African-Americans and Hispanics
2 that are costlier than better loans for which they qualify” and “failing to monitor” for
3 racial disparities after “Wells Fargo had notice of widespread product placement
4 disparities based on race and national origin.”⁴⁴ Wells Fargo also systematically
5 “fail[ed] to underwrite loans based on traditional underwriting criteria such as debt-
6 to-income ratio, loan-to-value ratio, FICO score, and work history.”⁴⁵ This led
7 District Judge Edward M. Chen to conclude that “Oakland has identified specific
8 employment practices in addition to the mere delegation of discretion.”⁴⁶

9 64. The practices leading to the 2012 and 2015 suits against Wells Fargo
10 included manual revisions to applications to reverse redline applicants who would
11 have been classified in a more risky area. For a time, these practices receded, and
12 Wells Fargo’s refinancing rates to Black homeowners were similar to those of other
13 major lenders. But by 2020, Wells Fargo’s rates plummeted in relation to the
14 approval rates at other banks.

15 65. The City of Oakland is not the sole municipality that has sought to hold
16 Wells Fargo to account for its discriminatory conduct. Cook County (Chicago)
17 brought suit alleging predatory lending practices to strip minority homeowners of
18 the equity from their homes.⁴⁷ “Publicly available loan origination data indicates
19 that the percentage of high-cost and other nonprime loans issued by Wells Fargo in
20 Cook County to minority borrowers well exceeded the County’s percentage of
21

22 ⁴⁴ *Id.* at 33.

23 ⁴⁵ *Id.* at 9.

24
25 ⁴⁶ *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-CV-04321-EMC, 2018 WL
26 3008538, at *15 (N.D. Cal. June 15, 2018), *aff’d in part, rev’d in part on other*
27 *grounds City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030 (9th Cir. 2021).

28 ⁴⁷ *Cty. of Cook, Illinois v. Wells Fargo & Co.*, 14-C-9548-GF (N.D. Ill.).

1 minority home owners—typically by a factor of two to three.”⁴⁸ And the
2 disproportionately White employees at Wells Fargo were given “discretion to steer
3 prime-eligible minority borrowers into nonprime loans.”⁴⁹ “Wells Fargo subjected
4 minority borrowers to equity stripping to a greater extent than it did nonminority
5 borrowers with similar credit histories.”⁵⁰ And “minority borrowers were
6 particularly susceptible to Wells Fargo’s predatory practices because they were
7 more likely than nonminority borrowers to lack access to low-cost credit,
8 relationships with banks and other traditional depository institutions, and adequate
9 comparative financial information.”⁵¹

10 66. In 2019, Wells Fargo settled a lawsuit with the City of Philadelphia
11 premised on allegations that it purposefully made it difficult for minorities to
12 refinance their mortgages.⁵² The court in that case identified seven Wells Fargo
13 policies that contributed to the discrimination against minorities: (1) knowing about
14 lending practices that either created high risk and higher cost loans to minorities
15 compared to comparably credit situated White borrowers or failing to adequately
16 monitor the Bank’s practices regarding mortgage loans, including but not limited to
17 originations, marketing, sales, and risk management; (2) failing to underwrite loans
18 based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value
19 ratio, FICO score, and work history; (3) failing to prudently underwrite hybrid
20 adjustable-rate mortgages (“ARMs”), such as 2/28s and 3/27s; (4) failing to
21 prudently underwrite refinance loans, where borrowers substitute unaffordable

22 ⁴⁸ *Cty. of Cook, Illinois v. Wells Fargo & Co.*, 314 F. Supp. 3d 975, 980 (N.D. Ill.
23 2018).

24 ⁴⁹ *Id.*

25 ⁵⁰ *Id.*

26 ⁵¹ *Id.*

27 ⁵² <https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-litigation/>.
28

1 mortgage loans for existing mortgages that they are well-suited for and that allow
2 them to build equity; (5) failing to monitor and implement necessary procedures
3 within Wells Fargo's Internal Audit, Corporate Risk, Human Resources, Law
4 Department, and Board of Directors throughout the Community Banking segment,
5 which includes Wells Fargo's retail mortgage banking business responsible for the
6 unlawful activities set forth herein, to ensure compliance with federal fair lending
7 laws; (6) failing to abide by the terms of Wells Fargo's Vision & Values, which
8 purportedly guides Defendants' business practices and relationships with customers;
9 and (7) failing to ensure that Wells Fargo's decentralized organizational structure
10 was capable of properly monitoring mortgage lending activities within Community
11 Banking.

12 67. Wells Fargo's pervasive discrimination is not limited to housing. In
13 August 2020, the company entered into a conciliation agreement with the U.S.
14 Department of Labor and paid \$7,800,000 over allegations of racist hiring practices.
15 The Department of Labor under the Trump administration found that the company
16 "discriminated against 34,193 African American applicants for banking, customer
17 sales and service, and administrative support positions at U.S. locations
18 nationwide."⁵³

19 **C. The Refinancing Boom**

20 68. During the last few years, interest rates were near an all-time low in the
21 United States, and homeowners who held mortgage loans at higher rates (meaning a
22 great deal of homeowners) sought to refinance their loans at lower rates.
23 Refinancing during this time allowed homeowners to significantly reduce their
24 monthly payments and to owe less mortgage interest over the life of the loan. Over
25 the last two years, homeowners in the United States refinanced over \$5 trillion
26

27 ⁵³ <https://www.dol.gov/newsroom/releases/ofccp/ofccp20200824>.

1 worth of mortgages.

2 69. In 2020, the prevailing market interest rates on mortgages “fell below
3 3% for the first time”⁵⁴ since it began being surveyed in 1970.⁵⁵ And a study by the
4 Federal Reserve Banks of Boston, Atlanta, and Philadelphia found these
5 unprecedented low rates “spurred a boom in refinances” that was distributed
6 unequally.⁵⁶ Although “Black and [W]hite borrowers were about equally likely to
7 refinance before the pandemic, [] Black borrowers were 40 less likely than [W]hite
8 borrowers to refinance after the pandemic started and interest rates dropped.”⁵⁷ All
9 told, only 6% of Black borrowers refinanced during the COVID-19 pandemic,
10 compared to 12% of White borrowers.⁵⁸ With respect to Wells Fargo, that disparity
11 does not result from a lack of interest in refinancing by Black homeowners; it results
12 from disparate and discriminatory treatment by Wells Fargo that blocked Black
13 homeowners from engaging in the process.

14 **D. Wells Fargo’s COVID-19 Era Refinancing Application Process**

15 Part 1: Gathering of Key Geographic, Financial and Demographic Data and 16 Submission of Form 1003 Through “Blend”

17 70. Refinancing is necessarily a simpler process than obtaining an initial
18 home loan. Homeowners who have made their payments on time and who seek to
19 refinance already own the necessary collateral and have already been approved for a
20

21 ⁵⁴ *Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth*
22 *Accumulation during COVID-19*, Kristopher Gerardi, Lauren Lambie-Hanson, and
23 Paul Willen, available at <https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2021/cpp20210622.pdf>.

24 ⁵⁵ *Id.* at 1.

25 ⁵⁶ *Id.*

26 ⁵⁷ *Id.* at 2.

27 ⁵⁸ *Id.*

1 home loan. In addition, if the borrower is refinancing with the same bank that holds
2 the original mortgage, that bank has access to detailed information about a
3 borrower's payment history and, in many cases, will be evaluating that borrower's
4 ability to make an even *lower* monthly payment than what was already being made.
5 Determining whether to refinance, thus, is a less involved process than determining
6 whether to issue a mortgage, or at least it should be.

7 71. On November 27, 2017, as part of its explicit policy to "leverage the
8 ideas in Silicon Valley and beyond" in mortgage underwriting, then-Wells Fargo
9 CEO Tim Sloan announced its partnership with San Francisco startup Blend Labs to
10 develop a new online mortgage application and related tools.

11 72. During the COVID-19 era, Wells Fargo's idea of "leverag[ing] the
12 ideas in Silicon Valley" involved, first, obtaining a prospective refinance applicant's
13 personal information, including name, phone number, email address, and the last
14 four digits of the prospective applicant's Social Security number. Applicants are,
15 thus, required to have and utilize email to participate in the process, including
16 checking Wells Fargo's loan tracker system for updates and requests for additional
17 information. When, during the pandemic, visiting loan officers in person became
18 infeasible, applicants without technical sophistication were disadvantaged.

19 73. At this preliminary stage, Wells Fargo's algorithm obtains the first data
20 points that are subsequently utilized in its discriminatory refinance decisions:
21 names, phone numbers (including area codes), email addresses and Social Security
22 numbers that can then be tied to other data and used in other formulae within Wells
23 Fargo's systems.

24 74. Next, Wells Fargo sends the applicant, via electronic mail, a dedicated
25 link through Blend, the digital banking platform developed by Wells Fargo in
26 conjunction with Blend Labs. That link enables the applicant to complete a Uniform
27 Residential Loan Application (Form 1003) and submit that application to Wells
28 Fargo.

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1 75. It is here that Wells Fargo collects more information for its lending
2 algorithm to use: the information collected on this form includes the borrower's
3 name, alternate names, Social Security number, date of birth, citizenship status,
4 names of borrowers, marital status, number and ages of dependents, home, mobile
5 and work phone numbers, the subject property address, property value, status of
6 property, intended occupancy and monthly expenses, former addresses, mailing
7 addresses, employment information, income information, asset information,
8 liabilities and expenses, and military service.

9 76. Next, a Wells Fargo loan officer conducts a follow-up telephone or in-
10 person interview with the refinance applicant to obtain additional information that
11 cannot be submitted online, including the financial acknowledgment form and the
12 Demographic Information Addendum, which specifically asks about ethnicity, race,
13 and gender.

14 77. Here, Wells Fargo's process places particular emphasis on race: the
15 company demands that, to the extent the interview is conducted in person, the loan
16 officer must visually observe the applicant and consider the applicant's surname in
17 an effort to determine the race of the prospective applicant. Here, too, Wells
18 Fargo's algorithm receives key demographic and financial data that it then utilizes in
19 its lending decisions.

20 Part 2: Running "Blend" Data Through Automated CORE "Pioneering
21 Underwriting System" Systematically Infected with Racially Infected Algorithms
22 and Overlays

23 78. Having obtained all of the geographic, demographic and other data
24 necessary through Blend and the submission of the Form 1003, the Wells Fargo loan
25 originator does the equivalent of pressing "send," submitting the 1003 for decision
26 to Wells Fargo's CORE automated underwriting system. Confidential informants
27 with knowledge of the operation of these systems recount that after operating as
28 described herein—running both Desktop Underwriter ("DU") and Loan Prospector

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1 (“LP”) simultaneously—CORE’s decision would come back as A1 or A2; which
 2 meant that the loan was approved; C1, which meant that the loan had to go through
 3 a manual underwriting process; or C2, which meant that the applicant was deemed
 4 “not loanable” and denied. During the COVID-19 era, Black refinance applicants
 5 were systematically slotted by CORE into C1 and C2 categories.

6 79. The idea of something that operates generally like CORE is, of course,
 7 nothing new or nothing unique. Used properly, automated underwriting systems can
 8 quickly use Fannie Mae and Freddie Mac underwriting criteria to evaluate the risk
 9 profile of a loan and recommend its approval or denial with respect to race-neutral
 10 criteria to human underwriters and loan processors who can, on average,
 11 comfortably handle 30 files per month, who are specially trained in the bank’s fair
 12 lending compliance programs and procedures, and who can ensure that the
 13 guidelines and mechanics of the algorithm are operating in accordance with these
 14 requirements.

15 80. But the consequences can be immediate and pernicious when CORE-
 16 like systems are not properly used or supervised by employees with training in fair
 17 lending practices. The director of the Consumer Financial Protection Bureau
 18 (“CFPB”) describes these types of banking algorithms as “black boxes behind brick
 19 walls.”⁵⁹ “When consumers and regulators do not know how decisions are made by
 20 the algorithms, consumers are unable to participate in a fair and competitive market
 21 free from bias.”⁶⁰

22 81. Such was indeed the case at Wells Fargo. As recognized by a group of
 23 United States Senators, including the chairman of the Senate Finance Committee,

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 25 ⁵⁹ <https://www.consumerfinance.gov/about-us/newsroom/remarks-of-director-rohit-chopra-at-a-joint-doj-cfpb-and-occ-press-conference-on-the-trustmark-national-bank-enforcement-action/>.

26 _____
 27 ⁶⁰ *Id.*

1 who wanted to investigate the bank for “potentially illegal discrimination” and
 2 demanded the bank produce to the Committee the data and algorithms it uses to
 3 evaluate applicants,⁶¹ the operations and impact of Wells Fargo’s CORE automated
 4 underwriting system are both new and unique in their treatment of Black applicants.

5 82. More specifically, confidential informants with knowledge of Wells
 6 Fargo’s residential mortgage lending operations describe a situation where, around
 7 the time that COVID-19 hit, understaffed Wells Fargo underwriting departments
 8 made a series of deliberate and intentional choices to centralize lending decisions.
 9 These decisions, ostensibly made in order to facilitate work-from-home, took human
 10 supervision and fair-lending compliance out of the process. Seemingly trumpeting
 11 the effect of these decisions, Wells Fargo went so far as to make an internal
 12 announcement that it would place increasing and undue reliance on machine
 13 learning processes in an automated underwriting system. But that system was
 14 increasingly infected with explicit and implicit racial signals (so-called “overlays”)
 15 that had, as their proximate and likely result, the disparate impact reflected in the
 16 statistical analyses set forth in this Amended Complaint during the time periods at
 17 issue herein.

18 83. These Wells Fargo-specific overlays represent manifestations of the
 19 same continuous and unbroken practice of engaging in business policies and
 20 practices that create an “artificial, arbitrary, and unnecessary” barrier to fair-housing
 21 opportunities for Black home purchasers and owners.

22 84. ***Geographic Indicators.*** Among the overlays utilized by Wells Fargo’s
 23 COVID-19 era CORE automated underwriting processes are geographic indicators,
 24 the effect of which is modern-day redlining. Borrowers seeking to refinance

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 26 _____
 27 ⁶¹ *Wells Fargo Pressed by Senators on Race Disparity in Refinancing*, Yahoo!
 28 Finance, accessible at: <https://finance.yahoo.com/news/wells-fargo-pressed-senators-race-171439115.html>.

1 property in Black-majority neighborhoods are deemed by the algorithm to be more
 2 of a lending risk than similarly situated White borrowers seeking to refinance
 3 property in non-Black-majority neighborhoods. Wells Fargo's algorithm effectuates
 4 this racial signaling by comparing address data provided in the borrower's Form
 5 1003 to low and moderate income census tract data within Wells Fargo's internal
 6 systems, and identifying borrowers with property in Black-majority neighborhoods
 7 as more of a lending risk than borrowers with property in White-majority
 8 neighborhoods. None of this is required by legitimate, race-neutral underwriting
 9 criteria, let alone criteria approved by Fannie Mae and Freddie Mac.

10 85. ***Post-Close Liquidity Requirements.*** Another overlay utilized by Wells
 11 Fargo's CORE underwriting system is a 50% increase in Wells Fargo's
 12 requirements for post-close liquidity and severe restrictions on the sources of that
 13 liquidity. Before March 2020—and consistent with Fannie Mae and Freddie Mac
 14 underwriting guidelines—Wells Fargo generally required borrowers to be able to
 15 show 12 months of post-close reserves in order to close their loans. When COVID-
 16 19 hit, however, Wells Fargo programmed its system to only approve borrowers
 17 who could show 18 months of post-close liquidity for W-2 wage earners, and 24
 18 months for self-employed K-1 borrowers. Wells Fargo further changed the
 19 definition of post-close liquidity to allow only 50% of the post-close liquidity to
 20 come from retirement accounts, often the greatest source of liquidity for borrowers.

21 86. Not only was this huge increase not required by legitimate, race-neutral
 22 underwriting criteria, it was a change that Wells Fargo knew would effectuate a
 23 racially disparate impact. An April 2020 JP Morgan Chase Institute report found
 24 that for every dollar in liquid assets held by White Americans, Black Americans
 25 held 32 cents.⁶² On average, while Black families have \$2,000 or less in liquid

26 _____
 27 ⁶² [https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-](https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-race-report.pdf)
 28 [co/institute/pdf/institute-race-report.pdf](https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-race-report.pdf).

savings, the typical White family has more than four times that amount.⁶³

87. **Demographic Indicators.** A further criteria utilized by Wells Fargo is, indeed, race itself. For example, employees responsible for the programming of Wells Fargo’s automated underwriting processes describe the system’s use of Bayesian Improved Surname Geocoding (“BISG”),⁶⁴ a method that applies Bayes’ Rule to predict the race or ethnicity of an individual utilizing the individual’s surname and geocoded location. This process, which necessitates an internal determination by the CORE algorithm of which neighborhoods are associated with which racial group, works as follows:⁶⁵

- (i) first, by calculating the prior probability of an individual – i – being of a certain racial group r given their surname:

$$Pr(R_i = r | S_i = s)$$

- (ii) next, by updating that probability with the probability of the individual i living in a geographic location g that is associated with a particular racial group r :

$$Pr(G_i = g | R_i = r)$$

- (iii) and finally, by using Bayes’ Theorem to determine the probability that a particular borrower actually belongs to a particular racial or ethnic group.

$$Pr(R_i = r | S_i = s, G_i = g) = \frac{Pr(G_i = g | R_i = r) Pr(R_i = r | S_i = s)}{\sum_{i=1}^n Pr(G_i = g | R_i = r) Pr(R_i = r | S_i = s)}$$

88. By utilizing BISG processes in its automated underwriting processes, Wells Fargo’s formulae utilize demographic criteria, including race, “imputed from

⁶³ *Id.*

⁶⁴ <https://ww2.amstat.org/meetings/sdss/2020/onlineprogram/ViewPresentation.cfm?file=309619.pdf>.

⁶⁵ <https://cran.r-project.org/web/packages/eiCompare/vignettes/bisg.html>.

1 databases of names and addresses” using processes like Bayesian Improved
 2 Surname Geocoding that associate neighborhoods with races to supplement Form
 3 1003’s race disclosures and assist in the overall racial assessment that allows the
 4 algorithm, improperly, to rely on race in the risk determination process.

5 89. ***Uncorrected and Racially Biased Appraisals.*** Wells Fargo also
 6 considers uncorrected historical and current appraisal data from geographically
 7 differentiated locations in its refinance evaluation process. Race-stratified
 8 differentials in appraisal data are well known to Wells Fargo and others in the
 9 banking industry. Indeed, according to a March 23, 2022 report in *The Washington*
 10 *Post* citing Brookings Institution data, “homes in Black neighborhoods” (which, as
 11 already discussed, CORE identifies) routinely appraise at “23 percent less, on
 12 average, than those in comparable White neighborhoods – despite having similar
 13 neighborhood and property characteristics and amenities.”⁶⁶ Freddie Mac has
 14 similarly “found that 12.5 percent of appraisals for home purchases in Black
 15 neighborhoods and 15.4 percent in Latino neighborhoods came in below the contract
 16 price, compared with 7.4 percent of appraisals in White neighborhoods,”⁶⁷ due in
 17 part to the well-known and systematic failure of appraisers to choose comparisons
 18 sales in an appropriately broad geographic range for properties located in Black and
 19 Latino neighborhoods.⁶⁸ Failure to correct for this longstanding disparity within
 20 automated underwriting systems will automatically and systematically skew the
 21 loan-to-value calculations against Black homeowners, making their loans look like
 22 riskier bets than they actually are for the banks.

23 90. Wells Fargo’s automated underwriting system does not correct

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 25 ⁶⁶ [https://www.washingtonpost.com/business/2022/03/23/home-appraisal-racial-](https://www.washingtonpost.com/business/2022/03/23/home-appraisal-racial-bias/)
 26 [bias/](https://www.washingtonpost.com/business/2022/03/23/home-appraisal-racial-bias/).

27 ⁶⁷ *Id.*

28 ⁶⁸ *Id.*

1 appropriately for these racial disparities in appraisals, instead placing undue reliance
 2 on an uncorrected data point that systematically undervalues properties in
 3 neighborhoods populated by Black homeowners. Wells Fargo's failure to correct
 4 for this well-known disparity is not required by any legitimate underwriting criteria.

5 91. ***Unjustified Increased FICO Requirements.*** A further COVID-19 era
 6 algorithmic overlay utilized by the Wells Fargo CORE system is increased credit
 7 score requirements. According to a confidential informant, Wells Fargo imposed a
 8 higher minimum credit score than that required for an FHA loan or a Fannie Mae-
 9 backed loan. According to the confidential informant, if Fannie Mae required a
 10 minimum credit score of 600, Wells Fargo would require a minimum score of 620,
 11 meaning CORE automatically rejected anyone with a credit score below 620. The
 12 racial impact of this change, which was not justified by legitimate underwriting
 13 criteria, is clear: in February 2021, it was reported that one in five Black consumers
 14 have FICO scores below 620; meanwhile one out of every 19 White consumers are
 15 in the sub-620 category.⁶⁹

16 92. A study done by the Board of Governors of the Federal Reserve System
 17 analyzing federal mortgage data identified no "evidence [a]s to whether these tighter
 18 standards reduce loan risk to justify the disparate impact on minority denials they
 19 are associated with."⁷⁰ And after controlling for relevant underwriting factors (debt-
 20 to-income ratios, loan-to-value ratios, credit scores, etc.) the study found that
 21 "[l]enders who impose the strictest standards on their [W]hite applicants [like Wells
 22

23 _____
 24 ⁶⁹ <https://www.forbes.com/advisor/credit-cards/from-inherent-racial-bias-to-incorrect-data-the-problems-with-current-credit-scoring-models/>.

25 ⁷⁰ *How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human*
 26 *and Algorithmic Credit Decisions*, Neil Bhutta, Aurel Hizmo, and Daniel Ringo
 27 (July 2021), at 12, n.20, available at: [https://papers.ssrn.com/sol3/papers.cfm?](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663)
 28 [abstract_id=3887663](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663).

1 Fargo] tend to have the largest unexplained excess denials of minority applicants,”
 2 including Black applicants.⁷¹

3 93. In 2021, six Wells Fargo employees and officers with doctorate degrees
 4 published a study warning about the dangers of banking algorithms used by Wells
 5 Fargo and its peers. The study was published on arXiv, an open-access archive of
 6 scholarly articles in the fields of computer science, quantitative finance, statistics,
 7 and economics, among others, which is operated by Cornell University.⁷²

8 94. The authors of the study noted that “despite ‘years of intense scrutiny,
 9 lending discrimination still persist[s]’” and that the arrival of flexible and automated
 10 AI/ML [artificial intelligence/machine learning] algorithms and “the availability of
 11 alternative sources of data are... exacerbating” this discrimination.⁷³

12 95. The potential sources of bias and discrimination are multifold.
 13 According to the study, historical data can often be skewed against specific groups,
 14 particularly where there is limited information on protected groups.⁷⁴ Moreover,
 15 biases in historical data can be exacerbated with the use of machine learning
 16 because algorithms, which automate feature engineering, can ignore the presence of
 17 surrogate variables for protected attributes.⁷⁵

18 96. Bias can also be present in alternate sources of data, which can be
 19 harvested from the worldwide web, social media, and blogs. Often, one’s digital

20 ⁷¹ *Id.* at 12.

21 ⁷² <https://arxiv.org/>.

22 ⁷³ *Bias, Fairness, and Accountability with AI and ML Algorithms*, Nengfeng Zhou,
 23 Zach Zhang, Vijayan N. Nair, Harsh Singhal, Jie Chen, and Agus Sudjianto,
 24 Corporate Model Risk, Wells Fargo (May 6, 2021), available at:
 25 <https://arxiv.org/ftp/arxiv/papers/2105/2105.06558.pdf>, at page 4.

26 ⁷⁴ *Id.* at 5.

27 ⁷⁵ *Id.*

1 footprint has strong predictive performance in credit scoring, but these “predictors
2 are highly correlated with socio-economic variables that are surrogates for protected
3 groups.”⁷⁶ “[T]hese variables are highly related to protected classes, and the
4 availability of such seemingly innocuous information, combined with flexible ‘data
5 snooping’ ML algorithms, can easily lead to ‘proxy discrimination.’”⁷⁷

6 97. “Unstructured data, *such as texts, audio, and images*, are increasingly
7 analyzed through AI/ML [artificial intelligence/machine learning] techniques in
8 banking and finance.”⁷⁸ Such a “selection process can suffer from ‘implicit biases’”
9 because the use of social media data is highly correlated with individuals’ race and
10 national origin. It is easy to envision the invidious nature of this technology. An
11 algorithm that reviews billions of social media posts will start to associate accounts
12 with more posts with more Black faces as having lower creditworthiness than posts
13 with more lighter-skinned faces. This same algorithm also analyzes the speech
14 patterns used in the videos, and associate’s creditworthiness with “talking white”
15 and speaking fluent English. The same algorithm deems those who speak in an
16 Urban vernacular, Gullah, or those who learned English as a second language as less
17 creditworthy. Worse yet, this algorithm learns to judge creditworthiness based on
18 word choice and use of certain slang. What is more, these algorithms are more
19 prone to perpetuate guilt by association because it is well known that face
20 recognition technologies consistently misidentify Black faces at much higher rates
21 than White faces.⁷⁹ Thus, “[f]airness concerns are heightened when alternative
22

23 ⁷⁶ *Id.*

24 ⁷⁷ *Id.*

25 ⁷⁸ *Id.* at 6.

26
27 ⁷⁹ *Racial Discrimination in Face Recognition Technology*, Alex Najibi, Harvard
28 University Graduate School of Arts and Sciences (October 24, 2020), available at:
<https://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition->

1 sources of data, such as *social-media data, information on biometrics, speech or*
 2 *language*, are used because it is not easy to scrub the data of *demographic*
 3 *proxies*.”⁸⁰

4 98. In addition to data bias, the automated nature of machine learning
 5 algorithms “miss[es] the potential for correlated surrogate variables causing proxy
 6 discrimination.”⁸¹ “Data bias together with poor optimization of algorithms can
 7 cause severe harm to protected groups.”⁸²

8 99. Notably, the study concludes that the use of “black-box algorithms that
 9 are not well-understood” have “potential for serious harm” in the consumer lending
 10 space, and the models “must be continually monitored for disparate impact
 11 testing.”⁸³ A “[s]eparate fair lending group conducts periodic backtesting and trend
 12 analysis to validate that credit underwriting systems do not discriminate against
 13 applicants on a prohibited basis.”⁸⁴

14 **E. Wells Fargo’s COVID-19 Era Understaffing and Failure to Correct for** 15 **Discriminatory Automated Lending Decisions**

16 100. Wells Fargo is no doubt well aware that properly functioning banks,
 17 including its competitors, correct for biases within automated underwriting
 18 processes by employing trained underwriters and fair lending teams that are
 19 supposed to act as a backstop against the racially pernicious consequences that arise

20
 21 _____
 22 technology/.

23 ⁸⁰ *Id.* at 13.

24 ⁸¹ *Id.* at 6.

25 ⁸² *Id.* at 7.

26 ⁸³ *Id.* at 13.

27 ⁸⁴ <https://ww2.amstat.org/meetings/sdss/2020/onlineprogram/ViewPresentation.cfm?file=309619.pdf>.
 28

1 from the unrestrained functioning of automated processes that, left unchecked, can
2 systematically identify Black borrowers as undue credit risks.

3 101. Such was not the case at Wells Fargo. Confidential informants with
4 knowledge of Wells Fargo's refinance practices in recent years describe a system
5 where Wells Fargo made a business decision to centralize and emphasize automated
6 processes at the expense of individualized lending decisions. They explain that
7 Wells Fargo's loan originators, processors and underwriters were overworked—
8 sometimes handling as many as *three times* the normal monthly volume expected of
9 loan processors and underwriters—and systematically disincentivized to “check the
10 work” of the CORE system. These witnesses also describe changes that were made,
11 such as to remove their ability to make changes within Wells Fargo's automated
12 system, that would result in a greater likelihood of an application being approved.

13 102. Given the racially signaled functioning of Wells Fargo's COVID-19 era
14 CORE algorithm, the effect of this was clear: nobody was available to provide a
15 check on the racially biased lending decisions taking place at Wells Fargo, which
16 resulted in delays, denials and systematic application of higher interest rates to
17 Black borrowers at a rate that far exceeded anything in the industry.

18 **F. Wells Fargo's Knowledge of Disparate Impact of Overlays**

19 103. Not providing a human check on Wells Fargo's discriminatory lending
20 practices did not, however, mean that Wells Fargo was unaware of the
21 discriminatory impact of its practices. Quite the contrary: throughout the relevant
22 time period, confidential informants with knowledge of Wells Fargo's residential
23 lending practices emphasize the extent to which senior Wells Fargo executives were
24 fully aware of the disparate impact of these policies and practices.

25 104. These witnesses emphasize that throughout the relevant time period,
26 Wells Fargo generated a “Diversity Market Segments Report” that was distributed
27 companywide via electronic mail distribution on a monthly basis. Comprised of
28 Wells Fargo's nationwide lending statistics, the report included, among other things,

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1 the racial breakdown of Wells Fargo's lending, the percentage of loans being made
 2 in certain locations and by certain originators and offices, whether Wells Fargo met
 3 the Community Reinvestment Act⁸⁵ requirements, and the percentage of loans that
 4 were made to first-time homebuyers. These reports were reviewed and discussed
 5 during monthly regional calls that congratulated employees on their efforts reflected
 6 therein.

7 105. And yet, despite these monthly reports that provided a real-time exposé
 8 of the pernicious significant adverse effect of its overlays on Black applicants, Wells
 9 Fargo did nothing.

10 **G. Wells Fargo's Algorithm Has a Disparate Impact on Black Homeowners**

11 106. The above practices, policies, and procedures are arbitrary and artificial
 12 and unnecessary to achieve a valid underwriting interest or legitimate objective.
 13 The vast difference between refinancing approval rates Wells Fargo issued to Black
 14 homeowners as compared to any other lending institution's approval rates negates
 15 any possible legitimate objective.

16 107. As noted, the above practices have a disproportionately adverse effect
 17 on Black Americans seeking to refinance their loans. Black homeowners are
 18 members of a protected class.

19 108. Wells Fargo's practices directly harmed Black homeowners by forcing
 20 them to pay higher interest rates while applications were pending, by forcing them
 21 to pay higher interest rates when applications were completed, and/or by denying
 22 refinancing applications. In the absence of these policies, Black homeowners would
 23 not have had to pay higher rates or face rejection in their refinancing applications.

24 109. The disparity between Wells Fargo's treatment of Black homeowner

25
 26 ⁸⁵ The Community Reinvestment Act, enacted in 1977, requires the Federal Reserve
 27 and other federal banking regulators to encourage financial institutions to help meet
 28 the credit needs of the communities in which they do business, including low- and
 moderate-income neighborhoods.

1 applicants and non-Black homeowner applicants is significant and shocking. As
 2 noted, a White American in the lowest income bracket was just as likely to receive
 3 refinancing approval as a Black homeowner in the highest income bracket.

4 110. Overall, in 2020, 8.4 million homeowners refinanced their mortgage
 5 loans to take advantage of historically low interest rates.⁸⁶ White homeowners
 6 saved an estimated \$3.8 billion in 2020. In comparison, Black homeowners who
 7 make up 9% of all homeowners saved just \$198 million, less than 4% of the total
 8 savings.⁸⁷

9 111. In 2020, using its algorithm, Defendant Wells Fargo approved Black
 10 homeowner refinancing applications at a rate lower than that of any other major
 11 lender in America. Wells Fargo was the only major lender in the United States that
 12 approved a smaller share of refinancing applications from Black homeowners in
 13 2020 than it had in 2010.⁸⁸

14 112. Wells Fargo ***denied over 50%*** of the Black homeowners seeking to
 15 refinance in 2020, and ***denied just under 50%*** of the Black homeowners seeking to
 16 refinance in 2021. No other major lending institution refused to refinance the homes
 17 of Black Americans at such stunning rates. The numbers tell a shameful story,
 18 without any legitimate explanation. In 2020—at the height of the refinancing boom,
 19 when millions of Americans benefitted from the historically low interest rate
 20 environment—Wells Fargo approved 47% of all applications by Black homeowners
 21

22 ⁸⁶ “Data Point 2020: Mortgage Market Activity and Trends,” Consumer Financial
 23 Protection Bureau, August 2021, pg. 11, available at
 24 [https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-](https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activitytrends_report_2021-08.pdf)
[activitytrends_report_2021-08.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activitytrends_report_2021-08.pdf).

25 ⁸⁷ [https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)
 26 [refinancing/](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/).

27 ⁸⁸ *Id.*

1 (meaning that Wells Fargo rejected the majority of applications from Black
2 homeowners), whereas all other lenders approved 71% of all applications by Black
3 homeowners.⁸⁹ In 2020, no other lending institution rejected a majority of Black
4 homeowners' applications for refinancing.⁹⁰

5 113. As shown in a recent Bloomberg article by Shawn Donnan, Ann Choi,
6 Hannah Levitt, and Christopher Cannon, data from eight million refinancing
7 applications from 2020 reveal that "the highest-income Black applicants [had] an
8 approval rate about the same as White borrowers in the lowest-income bracket."⁹¹
9 White refinancing applicants earning between \$0 and \$63,000 a year were **more**
10 **likely** to have their refinancing application approved by Wells Fargo than Black
11 refinancing applicants earning between \$120,000 and \$168,000 a year.⁹²

23 ⁸⁹ *Id.*

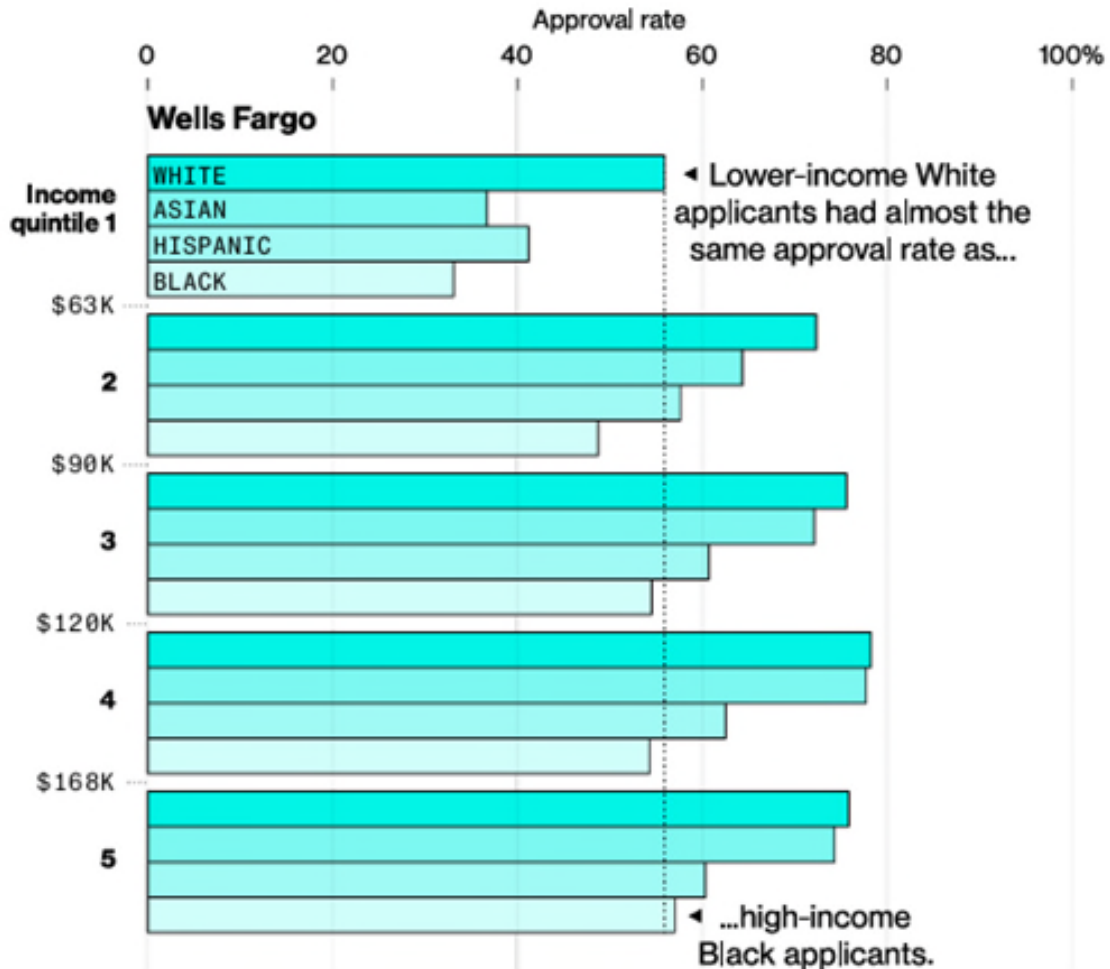
24 ⁹⁰ [https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)
25 [refinancing/](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/).

26 ⁹¹ *Id.*

27 ⁹² *Id.*

Higher Income, Same Approval

Wells Fargo's refinancing approval rates were higher for the lowest-income White applicants in 2020 than for all but the highest-income Black applicants.



Source: Bloomberg analysis of Home Mortgage Disclosure Act data for 8 million completed applications to refinance conventional loans in 2020.

114. Black applicants with properties in predominately Black counties fared worse. In Fulton County, where the population was 43.6% African American in 2020,⁹³ Wells Fargo approved fewer than 43% of refinancing applications completed by Black homeowners, the lowest approval rate among major lenders.⁹⁴

⁹³ <https://data.census.gov/cedsci/table?q=0500000US13121&tid=ACSDP5Y2020.DP05>.

⁹⁴ *Id.*

115. And even for those Black applicants whose loans were ultimately approved, they faced delays that White applicants living in predominately White neighborhoods did not, causing them damages through continued higher mortgage rates during the unjustified delay as they awaited loan approval. In some cases, Wells Fargo officers simply told Black applicants living in predominately Black neighborhoods that “perhaps the area is not eligible” for quick evaluations of refinancing applications.⁹⁵ Wells Fargo regularly approved refinancing applications of non-Black homeowners in a matter of weeks, but only approved the applications of Black homeowners after many months (if those Black applicants happened to be approved).

116. And because Wells Fargo designed an application process that is disproportionately difficult for Black homeowners to complete and engages in a practice of “soft denials,” where the loan officers leave applicants hanging or encourage them to look elsewhere, 27% of all Black homeowners who began a refinance application with Wells Fargo withdrew it.⁹⁶ Thus, only one-third of the 17,702 Black homeowners who sought refinancing were successful.⁹⁷

117. The story in 2021 was the same, with Wells Fargo approving a much lower percentage of Black American applicants than any other lender.⁹⁸ While the number of Black refinance applicants at Wells Fargo nearly doubled in 2021, accounting for 7% of the bank’s total refinance applicants and two percent higher than industry averages, Wells Fargo’s approval rates for Black borrowers continued

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

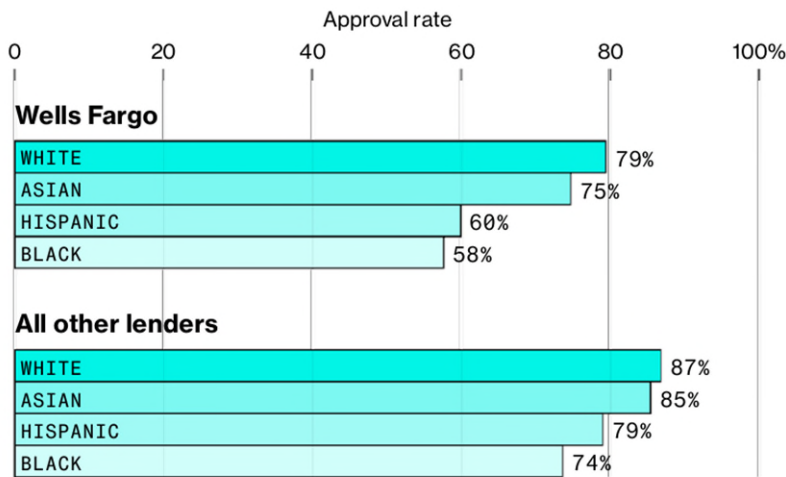
⁹⁸ <https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing>.

to lag behind its major competitors.

118. Wells Fargo approved only 58% of Black applicants compared to other lenders, which approved 74% of Black applicants.⁹⁹ And the disparity between Black and White refinance approval rates was 21% at Wells Fargo, nearly double the disparity (13%) for all other for other lenders.¹⁰⁰

Refinancing Disparities

Wells Fargo approved fewer Black homeowners' applications in 2021 than other lenders.



Source: Bloomberg analysis of Home Mortgage Disclosure Act data.

Note: Approval rates for completed applications for refinancing conventional, non-jumbo and first-lien mortgages in 2021.

119. And though Wells Fargo's Black refinancing approval rate improved slightly from 2020, the same was true at all other lenders, due to broader economic conditions.¹⁰¹ By comparison, other major lenders approved much higher rates of Black refinancing applicants in 2021: JP Morgan Chase & Co. approved 87% of Black applicants (only 6% less than White applicants), Rocket Mortgage LLC

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

1 approved 81% of Black applicants (only 7% less than White applicants), and Bank
 2 of America Corporation approved 75% of Black applicants (only 11% less than
 3 White applicants).¹⁰²

4 **H. Plaintiffs and the Class are Harmed by Wells Fargo's Race-Based**
 5 **Discrimination**

6 120. The stories of Black Americans whose applications were delayed or
 7 denied are legion.

8 121. One Black American applicant sought to refinance an \$890,000
 9 mortgage in February 2020. The applicant worked as a dentist and earned
 10 approximately \$250,000 a year. The applicant had never missed a mortgage
 11 payment and had minimal credit card debt. The applicant had over \$1 million in a
 12 Wells Fargo account, and also owned several rental properties with paying tenants.
 13 Nevertheless, over a six-month period, Wells Fargo asked and re-asked for
 14 documents. After the lengthy delay, Wells Fargo denied the application. The
 15 applicant subsequently sought refinancing from a different institution that granted
 16 the refinancing over the phone.

17 122. Another applicant sought to refinance a loan already held by Wells
 18 Fargo, which it had issued two years prior. The applicant had never missed a
 19 payment and had never even been late on a payment. They held the same job they
 20 held when they obtained the mortgage, and their credit score was over 780. For at
 21 least two months, Wells Fargo demanded more and more documents, leading the
 22 applicant to complain to his broker's superior. The applicant had to fax the same
 23 documents four or five times, which Wells Fargo claimed to have lost. Before
 24 Wells Fargo decided to deny the loan, the applicant went to another lender, who
 25 refinanced the loan in only three or four days.

26 123. Yet another applicant waited four months for Wells Fargo to approve
 27

28 ¹⁰² *Id.*

1 their refinancing applications. This applicant is a practicing doctor who owns
2 multiple investment properties attempting to refinance their primary residence.
3 During the application process, Wells Fargo repeatedly asked for documents and
4 repeatedly went silent, refusing to return the applicant's calls.

5 124. Plaintiff Aaron Braxton purchased his home in South Los Angeles,
6 California, near the University of Southern California, in April 2000, through a
7 Wells Fargo home loan for \$139,500 ("First Loan"). This First Loan was insured
8 through the FHA. In 2005, after the price of the house appreciated, he took out a
9 second home equity line of credit loan, also from Wells Fargo ("Second Loan"). He
10 improved upon the property and built an accessory dwelling unit. Today, the home
11 is worth approximately \$800,000, as it was in 2019. In or about August 2019, Mr.
12 Braxton began the process of applying to refinance his two Wells Fargo loans to
13 take advantage of reduced interest rates. At the time, he owed \$185,000 on both his
14 Wells Fargo loans and paid a 6% interest rate on both loans, multiple percentage
15 points higher than the average refinance rate at the time.

16 125. When Mr. Braxton initially applied to refinance his First Loan, Wells
17 Fargo repeatedly asked him to resubmit paperwork because Wells Fargo
18 representatives claimed the paperwork was either missing or lost. Wells Fargo
19 representatives also continually took weeks and weeks to issue or reply to
20 correspondence. Mr. Braxton thereafter began the process of refinancing his Second
21 Loan and was confronted with the same delays.

22 126. Frustrated by the delays and because he was continuing to pay a higher
23 mortgage rate while his applications were pending, Mr. Braxton regularly contacted
24 his loan officers and other Wells Fargo personnel to ask about the status of his
25 applications.

26 127. After months of frustrating encounters with Wells Fargo personnel, Mr.
27 Braxton decided to call HUD. A HUD representative informed Mr. Braxton that
28 they would be contacting Wells Fargo. The very next day, Wells Fargo approved

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1 the refinancing of Mr. Braxton's federally backed FHA home loan, approximately
2 nine months after he began the process.

3 128. Eventually, around October 2020, Wells Fargo finally approved a
4 refinancing of his Second Loan. However, despite the contact from HUD, which
5 presumably prompted it to act on Mr. Braxton's First Loan, Wells Fargo continued
6 its discrimination through race-based application delays. It continued to claim that
7 paperwork needed to process the Second Loan was missing, even though Mr.
8 Braxton had already provided the paperwork. At one point, after having sent a
9 notary to his home to finalize some paperwork, Wells Fargo informed Mr. Braxton
10 that the notary had lost the paperwork, and he needed to complete some forms again.

11 129. All told, Mr. Braxton submitted four applications because Wells Fargo
12 kept losing them. During the 16 months that his applications were pending, Mr.
13 Braxton continued to pay the higher original mortgage rates instead of the lower
14 refinanced rates he was seeking (and ultimately proven entitled to). However,
15 unbeknownst to Mr. Braxton, in the end the rate he received for his refinancing,
16 while lower than his original rate, was much higher than the fair market rate
17 received by similarly situated non-Black applicants.

18 130. Plaintiff Gia Gray is a Black homeowner who resides in Danville,
19 California.

20 131. Mrs. Gray is another victim of Wells Fargo's discriminatory policies.
21 Both Mrs. Gray and her husband are physicians. Both are employed and both,
22 individually, are in the top quintile of income earners. The same was true when they
23 applied to refinance their loans with Wells Fargo. Mrs. Gray's FICO score is above
24 800.

25 132. The couple owns three homes. Their primary residence is in Danville,
26 California—a predominately White area. The couple also own income properties in
27 Stockton, California, and Chicago, Illinois—more diverse areas. The couple had
28 Wells Fargo mortgages for all these homes, and, save for a balance of approximately

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1 \$1,000 on their credit card, the couple has and had no other debt. The couple never
2 missed a mortgage payment, and they always paid on time. They began the
3 refinancing process for their homes in February 2020.

4 133. The couple was only able to finance the Danville, California property—
5 in the predominately White area—after four months. Their loan officer was located
6 in Walnut Creek, California, another predominately White area, who actually took
7 time out of his day to visit their multimillion-dollar home in Danville in-person to
8 sign refinancing documentation. Even still, Wells Fargo kept asking them to
9 provide additional information, and even contacted the Human Resources
10 department at Mrs. Gray's office.

11 134. The couple was not as lucky on their two other income properties. The
12 loan officer would try to steer Mrs. Gray away from these properties and only
13 expressed an interest in refinancing her Danville, California property. Wells Fargo
14 eventually switched the couple's Walnut Creek loan officer to a Black assistant to
15 handle these properties. Wells Fargo would not return their calls for inquiries on
16 refinancing these two properties. When the couple did manage to get a hold of the
17 assistant or loan officer, they were told that Stockton, California property was in a
18 bad area, and that the Chicago, Illinois property, although in a good area, was high
19 risk, and that Wells Fargo was not looking to refinance high-risk areas. Frustrated
20 by Wells Fargo's ambivalence and inaction, the couple gave up on refinancing these
21 properties in December 2020, nearly a year after they started.

22 135. Plaintiff Bryan Brown is a Black homeowner who resides at 18 Elm
23 Street, 3rd Floor, Bristol, Connecticut 06010.

24 136. Mr. Brown purchased a three-unit, multifamily property in Bristol,
25 Connecticut in December 2010, through a Wells Fargo home loan for approximately
26 \$204,000. Mr. Brown and his family reside in one of the units, and he receives
27 rental income from the other two units. Today, the property is worth approximately
28 \$250,000.

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1 137. In October 2020, Mr. Brown began the process of applying to refinance
2 his loan to take advantage of reduced interest rates and to convert his conventional
3 30-year loan to a 15-year fixed mortgage. At the time, Mr. Brown owed
4 approximately \$150,000 and paid a 4.75% interest rate.

5 138. When Mr. Brown initially applied to refinance his loan, he submitted
6 financial statements, including but not limited to those relating to his three
7 investment properties. Frustrated by the delays and because he was continuing to
8 pay a higher mortgage rate while his application was pending, Mr. Brown regularly
9 contacted Wells Fargo personnel to ask about the status of his application. Rather
10 than provide Mr. Brown an explanation as to the delay, Wells Fargo repeatedly
11 requested that Mr. Brown *resubmit* financial documents and/or provide additional
12 documentation to demonstrate *how* he paid his credit card statements. Wells Fargo
13 also contacted Mr. Brown's employer on multiple occasions requesting that they
14 verify his employment.

15 139. Four months after Mr. Brown submitted his application, in or around
16 January/February 2021, Mr. Brown's application was denied.

17 140. Plaintiff Paul Martin is a Black homeowner and resides in Los Angeles,
18 California.

19 141. Paul Martin is a 14-year Hollywood entertainment executive at Sony
20 Pictures. In 2020, Paul Martin sought to refinance his home in the Ladera Heights
21 neighborhood of Los Angeles, California, which has a higher proportion of affluent
22 Blacks. His multimillion-dollar home was previously owned by WNBA superstar
23 Lisa Leslie and NBA player Aaron Afflalo.

24 142. But even Mr. Martin's shot was blocked by Wells Fargo. The bank
25 would not refinance his home unless he could get it appraised for \$2.0 million.
26 Wells Fargo's appraiser refused to come into Mr. Martin's home, and appraised it at
27 just shy of \$2.0 million based on comparisons in the neighborhood. Mr. Martin
28 went to another lender, who appraised the home at \$2.4 million and promptly

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1 refinanced his loan.

2 143. Plaintiffs' experiences are emblematic of the experiences of Black
3 Americans all over the country.

4 V. CLASS ALLEGATIONS

5 144. Plaintiffs bring this action on behalf of themselves and a potential class
6 of similarly situated Black homeowners.

7 145. Each and every claim alleged in this case is also alleged on behalf of
8 every member of the Class.

9 A. Class Definition

10 146. The Class includes all Black homeowners in the United States who,
11 from January 1, 2018 through the present (the "Class Period"), submitted an
12 application to refinance their home mortgage through Defendants that was (i)
13 processed at a rate slower than that of the average processing time of applications
14 made by non-Black applicants; or (ii) whose applications were denied; or (iii) whose
15 resulting refinance loans were made at higher interest rates as compared to similarly
16 situated non-Black applicants. Excluded from the Class are Defendants and their
17 employees, affiliates, parents, subsidiaries, and co-conspirators, whether or not
18 named in this Complaint, and the United States government.

19 147. Class certification is authorized under Federal Rule of Civil Procedure
20 23 and applies to claims for injunctive and equitable relief, including restitution,
21 under Rule 23(b)(2), and for monetary damages under Rule 23(b)(3).

22 148. There are at least 13,000 members of the Class.

23 149. The number of persons who fall within the definitions of the Class are
24 so numerous and geographically dispersed so as to make joinder of all members of
25 the Class or Subclass in their individual capacities impracticable, inefficient, and
26 unmanageable, and without class-wide relief, each member of the Class would
27 effectively be denied his, her, or their rights to prosecute and obtain legal and
28 equitable relief based on the claims and allegations averred in the Complaint.

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150. Plaintiffs, as detailed below, can fairly and adequately represent the proposed Class. In the alternative, Plaintiffs can act as the representatives of the below subclasses.

B. Proposed Subclasses

151. Additionally, or in the alternative, pursuant to Federal Rule of Civil Procedure 23(c)(5), Plaintiffs bring this action on behalf of the following subclasses:

152. **The Delayed Refinancing Subclass:** All Black persons in the United States who applied for refinancing from the Defendants during the class period and whose applications processed at a rate slower than that of the average processing time of applications made by non-Black applicants.

153. **The Higher Rate Subclass:** All Black persons in the United States who applied for refinancing from the Defendants during the class period and whose refinancing applications were eventually approved, but at a higher interest rate than prevailing market rates based on their creditworthiness.

154. **The Denied Refinancing Subclass:** All Black persons in the United States who applied for refinancing from the Defendants during the class period and whose applications were denied but should have been approved based on objective, race-neutral factors, including but not limited to: loan-to-value ratio, debt-to-income ratio, and credit score.

C. Numerosity and Ascertainability

155. **Numerosity.** While the exact numbers of the members of the Class and Subclasses are unknown to Plaintiffs at this time, membership in the Class and Subclasses may be ascertained from the records maintained by Defendants. At this time, Plaintiffs are informed and believe that the Class includes at least 13,000 and the Subclasses include tens of thousands of members. Therefore, the Class and Subclasses are sufficiently numerous that joinder of all members of the Class and Subclasses in a single action is impracticable under Rule 23(a)(1) of the Federal Rules of Civil Procedure, and the resolution of their claims through a class action

1 will be of benefit to the parties and the Court.

2 156. **Ascertainability.** The names and addresses of the members of the
3 Class and Subclasses are contained in Defendants' records. Notice can be provided
4 to the members of the Class and Subclasses through direct mailing, email,
5 publication, or otherwise using techniques and a form of notice similar to those
6 customarily used in consumer class actions arising under State and Federal law.

7 **D. Commonality and Predominance**

8 157. This matter involves common questions of law and fact which
9 predominate over any question solely affecting individual Class Members.

10 158. The common questions of law and fact include, but are not limited to:

- 11 • Whether Defendants systematically discriminated against Class
12 Members on account of their race;
- 13 • Whether Black applicants' refinance applications were processed
14 at a rate slower than that of the average processing time of
15 applications made by non-Black applicants;
- 16 • Whether Black applicants' refinance applications were denied
17 when the score of a similarly situated non-Black applicant would
18 be approved;
- 19 • Whether Black applicants' resulting refinance loans were made
20 at higher interest rates as compared to similarly situated non-
21 Black applicants;
- 22 • Whether Defendants selected disproportionately White areas for
23 rapid refinancing evaluation and disproportionately Black areas
24 for increased scrutiny;
- 25 • Whether Defendants' underwriting algorithms and machine
26 learning programs were racially biased and led to unfairly
27 discriminatory credit policies that harmed Black refinancing
28 applicants;
- Defendants' knowledge;
- Defendants' consumer disclosures;
- Defendants' internal approval process; and
- Defendants' use of appraisals.

159. **Predominance.** Class action status is warranted under Rule 23(b)(3) of
the Federal Rules of Civil Procedure because questions of law or fact common to the

1 members of the Class and Subclasses predominate over any questions affecting only
2 individual members. The interests of the members of the Class and Subclasses in
3 individually controlling the prosecution of separate actions are theoretical and not
4 practical. Prosecution of this action through multiple Class Representatives would
5 be superior to individual lawsuits. Plaintiffs are not aware of any difficulty which
6 will be encountered in the management of this litigation which should preclude its
7 maintenance as a class action.

8 **E. Typicality and Adequacy**

9 160. Plaintiffs' claims are typical of the other Class Members' claims
10 because all Class Members were injured in the same manner as a result of
11 substantially similar conduct by Defendants.

12 161. Plaintiffs are adequate Class Representatives because their interests do
13 not conflict with the interests of the other members of the Class and Subclasses they
14 seek to represent. Plaintiffs have retained counsel competent and experienced in
15 complex class action litigation, and Plaintiffs intend to prosecute this action
16 vigorously. The Class and Subclasses' interests will be fairly and adequately
17 protected by Plaintiffs and their counsel.

18 **F. Superiority**

19 162. A class action is the superior method for the fair and efficient
20 adjudication of this matter because the damages and other harms suffered by
21 Plaintiffs and other Class Members are small compared to the burden and expense
22 of individual litigation. Thus, it would be impractical, if not impossible, for
23 individual plaintiffs to seek redress against Defendants for the harms suffered.

24 163. Individual litigation of these harms would also be inefficient for the
25 court system, and would create a risk of inconsistent or contradictory rulings and
26 judgments.

27 164. No unusual circumstances exist that would make this matter more
28 difficult to manage than a typical class action. Individualized damages figures can

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1 be mathematically computed by collecting data about the length of each Class
2 Member's delay and the differential between the interest rates they ultimately
3 received versus the prevailing market rate based on race-neutral variables such as
4 debt-to-income ratio, loan-to-value ratio, and credit score.

5 **G. Injunctive Relief**

6 165. Plaintiffs also seek to represent a class under Rule 23(b)(2) seeking
7 injunctive relief forcing Wells Fargo to cease and desist its current discriminatory
8 practices.

9 **COUNT I**

10 **VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

11 **15 U.S.C. § 16901, *et seq.***

12 166. Plaintiffs, on behalf of themselves and all those similarly situated,
13 reallege each and every paragraph above and incorporate them by reference as
14 though fully stated herein.

15 167. The Equal Credit Opportunity Act makes it unlawful for a creditor to
16 discriminate against any applicant with respect to any aspect of a credit transaction
17 on the basis of race.

18 168. The Equal Credit Opportunity Act applies to applications for
19 refinancing, like those of the Plaintiffs and others similarly situated. Plaintiffs
20 applied for credit by seeking to refinance their home loans.

21 169. Defendants are creditors because they regularly extend, renew, and
22 continue issuances of credit.

23 170. Defendants' consistent delays, roadblocks, feigned difficulties, and
24 sometimes denials of applications for refinancing submitted by Black Americans
25 constitute race-based discrimination forbidden by the Equal Credit Opportunity Act.

26 171. Plaintiffs and all those similarly situated were harmed by Defendants'
27 conduct, including but not limited to harm in the form of higher interest rates paid
28 while applications were pending, higher interest rates paid upon a delayed approval,

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1 or from a denied application.

2 172. On behalf of themselves and the Class they seek to represent, Plaintiffs
3 request the relief set forth below.

4 **COUNT II**

5 **RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT**
6 **OF 1968, 42 U.S.C. § 3601, *et seq.***

7 173. Plaintiffs reallege each and every paragraph above and incorporate
8 them by reference as though fully stated herein.

9 174. The Fair Housing Act makes it unlawful, in residential real estate
10 transactions, such as refinancing, to discriminate against designated classes of
11 individuals.

12 175. Plaintiffs and others similarly situated sought to engage in residential
13 real estate transactions with the Defendants.

14 176. Plaintiffs and others similarly situated are Black Americans and
15 therefore members of a protected class under the Fair Housing Act.

16 177. Defendants refused to transact business with Plaintiffs and others
17 similarly situated when they refused to approve refinancing applications on the same
18 timeline as the applications made by other parties with similar qualifications that
19 were not members of the protected class, by causing applicants to withdraw
20 applications due to roadblocks and feigned difficulties, or by denying refinancing
21 applications. As noted, Defendants approved fewer than half of Black homeowners'
22 refinancing applications in 2020 while approving 71% of the applications of White
23 homeowners.

24 178. Defendants refused to transact business with Plaintiffs and those
25 similarly situated during the Class Period and at the same time did transact business
26 with non-Black homeowners with similar qualifications.

27 179. Plaintiffs and those similarly situated were injured by Defendants'
28 refusal to transact business with them because they paid application fees for

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1 refinancing applications that were delayed or denied, because they continued to pay
 2 higher interest rates while their delayed applications were pending, because they
 3 were provided with higher interest rates than other homeowners with similar
 4 qualifications, and/or because their applications were denied.

5 **COUNT III**

6 **RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

7 180. Plaintiffs reallege each and every paragraph above and incorporate
 8 them by reference as though fully stated herein.

9 181. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same
 10 right to make and enforce contracts, regardless of race. The term “make and
 11 enforce” contracts includes the making, performance, modification, and
 12 terminations of contracts, as well as all of the other aspects of a contractual
 13 relationship.

14 182. By seeking to refinance their home loans and submitting an application
 15 to Defendants, Plaintiffs and others similarly situated sought to “make and enforce”
 16 contracts with the Defendants.

17 183. Plaintiffs and those similarly situated were denied their right to make
 18 and enforce contracts when Defendants refused to provide refinancing on the same
 19 terms as they offered to members of a different race, by delaying or frustrating the
 20 applications process, and/or by denying the applications.

21 184. Plaintiffs and those similarly situated were harmed by Defendants’
 22 denial of their rights to make and enforce contracts.

23 **COUNT IV**

24 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT,** 25 **CALIFORNIA CIVIL CODE §51**

26 185. Plaintiffs reallege each and every paragraph above and incorporate
 27 them by reference as though fully stated herein.

28 186. The Unruh Civil Rights Act provides that all persons within the State of

1 California are free and equal no matter their race and are entitled to full and equal
2 treatment in all business establishments.

3 187. The Unruh Civil Rights Act thus prohibits discrimination of any kind
4 against any person in any business establishment.

5 188. Defendants are business establishments under the Unruh Civil Rights
6 Act.

7 189. Plaintiffs and other individuals similarly situated were denied full and
8 equal treatment under the Unruh Civil Rights Act when Defendants refused to offer
9 them refinancing terms on the same terms as individuals who were not Black
10 Americans.

11 190. Plaintiffs and other individuals similarly situated were harmed by
12 Defendants' refusal to transact business with them because they paid application
13 fees for refinancing applications that were delayed or denied, because they
14 continued to pay higher interest rates while their delayed applications were pending,
15 because they were provided with higher interest rates than other homeowners with
16 similar qualifications, and/or because their applications were denied.

17 **COUNT V**

18 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

19 191. Plaintiffs reallege each and every paragraph above and incorporate
20 them by reference as though fully stated herein.

21 192. The California Unfair Competition Law ("UCL") forbids "unlawful,
22 unfair or fraudulent" conduct in connection with business activity.

23 193. Defendants' business offering refinancing of existing loans is a
24 business activity under the UCL.

25 194. Plaintiffs and others similarly situated are "persons" under the UCL.

26 195. Defendants' conduct described herein constitutes unlawful competition,
27 as in the course of engaging in the business acts described above, it engaged in
28 conduct that constituted a predicate violation of the laws identified herein, namely

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1 the Equal Credit Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, and the
2 Unruh Civil Rights Act.

3 196. Defendants' conduct described herein constitutes unfair competition
4 under the UCL, as their practices are likely to deceive the public by informing the
5 public of an alleged commitment to diversity and equality, but instead using hidden
6 business practices designed to deny, delay and refuse the refinancing of loans of
7 Black Americans, and subjecting those that are approved, to unfavorable terms. As
8 there is no legitimate justification for these practices, which have a
9 disproportionately negative impact on the public, in comparison to any fair business
10 purpose, Defendants' practices are unfair as defined under the UCL.

11 197. Defendants' conduct described herein constitutes fraudulent
12 competition under the UCL, as they advertise and otherwise state that they are
13 committed to diversity and equality, and will fairly and quickly process the
14 refinancing applications of all applicants, but instead use hidden business practices
15 designed to deny, delay and refuse the refinancing of loans of Black Americans, and
16 subjecting those that are approved, to unfavorable terms. These business practices
17 are likely to deceive the public, and thus are fraudulent.

18 198. Plaintiffs and those similarly situated were injured by Defendants'
19 refusal to transact business with them because they paid application fees for
20 refinancing applications that were delayed or denied, because they continued to pay
21 higher interest rates while their delayed applications were pending, because they
22 were provided with higher interest rates than other homeowners with similar
23 qualifications, and/or because their applications were denied.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs respectfully request that this Court provides the
26 following relief:

- 27 a. Certify the 23(b)(2) and 23(b)(3) classes outlined above;
- 28 b. Designate Plaintiffs as Class Representatives and designate the

undersigned counsel as lead Class Counsel;

- c. Find that Defendants' acts described herein violate the Equal Credit Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, the Unruh Civil Rights Act, and the California UCL;
- d. Find that Defendants have engaged in a pattern and practice of racial discrimination resulting in the harm to Plaintiffs and class members described above;
- e. Award Plaintiffs and all others similarly situated restitutionary relief, together with compensatory and punitive damages;
- f. Award Plaintiffs and all others similarly situated injunctive relief by ordering Defendants to stop the discriminatory practices described herein;
- g. Award Plaintiffs and all others similarly situated prejudgment interest and attorney's fees, costs, and disbursements; and
- h. Award Plaintiffs and all others similarly situated such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable.

1 DATED: April 12, 2022

ELLIS GEORGE CIPOLLONE
O'BRIEN ANNAGUEY LLP

3 By: /s/ Dennis S. Ellis

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similarly situated

1 DATED: April 12, 2022

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5
6 By: /s/ Jason Frank

7 Jason Frank

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10 similarly situated

11 **Attestation under N.D. Cal. L.R. 5-1(h)**: the ECF filer of this document attests that
12 all of the other signatories have concurred in the filing of the document, which shall
13 serve in lieu of their signatures on the document.
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EXHIBIT C

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Attorneys for Plaintiff
CHRISTOPHER WILLIAMS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CHRISTOPHER WILLIAMS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A. and WELLS
FARGO & CO.,

Defendants.

CASE NO:

COMPLAINT

Class Action

Jury Trial Demanded

**COMPLAINT
CLASS ACTION**

Plaintiff Christopher Williams (“Williams”), on behalf of himself and all others similarly situated, by and through his attorneys, hereby files this Complaint against Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (collectively “Wells Fargo” or the “Firm”), and states as follows:

COMPLAINT

JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT

1
2 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343.
3
4 In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as the amount in
5 controversy exceeds \$75,000, Plaintiff is a citizen of Georgia, and neither Defendant is a citizen of
6 Georgia. Defendant Wells Fargo & Co. is incorporated in Delaware and its principal place of
7 business is in San Francisco, California, as set forth further below. Defendant Wells Fargo Bank,
8 N.A. is a national banking association chartered in South Dakota and with its principal place of
9 business in San Francisco, California.

10 2. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
11 § 1391(b) because both Defendants reside in this District and a substantial part of the events or
12 omissions giving rise to the claim occurred in this district, as the discriminatory policies emanated
13 and were executed from Wells Fargo's headquarters in this District. Venue is proper in the San
14 Francisco Division of the Northern District of California because a substantial part of the events or
15 omissions giving rise to the claims occurred in the county of San Francisco.

PARTIES

17
18 3. Defendant Wells Fargo & Co., is a publicly-traded, global financial services firm
19 and Fortune 500 corporation incorporated in Delaware and has its principal place of business in
20 San Francisco, California. As of December 31, 2020, Wells Fargo has assets of approximately \$1.9
21 trillion, loans of \$887.6 billion, deposits of \$1.4 trillion and stockholders' equity of \$185 billion.¹
22 Wells Fargo provides a wide variety of financial products and services to its global and domestic
23 clients, who include corporations, governments, financial institutions and individuals, including
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¹ <https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2020/10k.pdf>

1 home mortgages. Wells Fargo claims to serve at least one out of three households in the United
2 States.²

3 4. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in
4 South Dakota with its principal place of business in San Francisco, California, and a subsidiary of
5 Wells Fargo & Co.

6 5. Plaintiff Christopher Williams is African American and a citizen of Georgia. As
7 described below, Williams applied for a home mortgage with Wells Fargo and was discriminated
8 against on the basis of his race in the mortgage lending process by Wells Fargo.

9 FACTUAL ALLEGATIONS

10 6. As stated above, Wells Fargo is one of the largest banks in the country and one of
11 the top residential mortgage providers in the United States. Across the country, Wells Fargo applies
12 mortgage origination and underwriting policies and practices that intentionally and
13 disproportionately discriminate against and harm African American home loan applicants.
14 Williams was one of the many victims of Wells Fargo's racially discriminatory residential
15 mortgage policies and practices.

16 7. Wells Fargo has a long history of discriminating against African Americans and
17 maintains a corporate culture replete with harmful racial stereotypes and biased views about
18 African American customers. While Wells Fargo has long advertised its willingness to
19 symbolically support racial equality in banking, such as making investments to black owned
20

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26 ² [https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)
27 [launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)
28 [transactional-](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)
[accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20\(NYSE%3A,of%20ba](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)
[nking%2C%20investment%20and%20mortgage](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)

1 banks,³ it has not and will not meaningfully redress its systematic discrimination against its Black
2 and African American customers, borrowers, and mortgage applicants.

3 8. Wells Fargo's racial bias is illustrated by racial redlining and other discriminatory
4 practices against customers of color, as illustrated in a number of recent lawsuits and settlements.
5 For example, in 2011, a jury found Wells Fargo guilty of systematically discriminating against
6 minority home buyers by using a computer software for minority homeowners which resulted in
7 them paying more for their home loans than white borrowers. *Opal Jones, et. al v. Wells Fargo*
8 *Bank, N.A., et al.*, Case No. BC337821 (Los Angeles Superior Court) (\$3.5 million verdict). Wells
9 Fargo has also paid hundreds of millions of dollars to avoid litigating its discriminatory home
10 lending practices. Indeed, Wells Fargo agreed to a settlement valued at over \$440 million of a
11 lawsuit challenging the Firm's redlining practices that resulted in a disproportionate number of
12 foreclosures in African American neighborhoods in Shelby County and the City of Memphis. *City*
13 *of Memphis and Shelby County, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 2:09-CV-02857
14 (W.D. Tenn.). Wells Fargo also settled a lawsuit for \$37 million led by the National Fair Housing
15 Alliance alleging that Wells Fargo took better care of foreclosed properties that it owned in white
16 neighborhoods than those in African American and Latino communities. *National Fair Housing*
17 *Alliance, et al. v. Wells Fargo Bank N.A., et al*, HUD Case No. 09-12-0708-8 (U.S. Department of
18 Housing & Urban Development Office of Fair Housing & Equal Opportunity). Wells Fargo has
19 also faced and settled numerous lawsuits challenging its "reverse redlining" practices of charging
20 higher rates and imposing less favorable terms for minority home borrowers than for white home
21 borrowers. For instance, in 2013, Wells Fargo paid \$175 million to settle a lawsuit brought by the
22 United States Department of Justice alleging that the Firm charged higher rates to its African
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28 ³ <https://www.foxbusiness.com/markets/wells-fargo-announces-investments-in-six-black-owned-banks>

1 American and Latino borrowers. *United States v. Wells Fargo Bank, NA*, Case No. 1:12-cv-01150
2 (D.D.C.).

3 9. In 2019, Wells Fargo paid \$10 million to settle a similar claim brought by the City
4 of Philadelphia. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D. Pa.
5 2019). Philadelphia alleged that Wells Fargo simply swapped the evil of redlining—refusing to
6 lend to minority communities—for the similarly pernicious reverse redlining—lending to minority
7 borrowers, but only saddling them with more expensive loans with worse terms than those extended
8 to white borrowers. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D.
9 Pa. 2019), Dkt. 1 (Complaint) ¶¶ 5–21. Philadelphia alleged that “since at least 2004 . . . Wells
10 Fargo has systematically engaged in a continuous and unbroken discriminatory pattern and practice
11 of issuing higher cost or more onerous mortgage loans to minority borrowers in Philadelphia when
12 more favorable and less expensive loans were being offered to similarly situated non-minority
13 borrowers.” *Id.* ¶ 5 (E.D. Pa.). Philadelphia’s statistical analysis revealed that African American
14 borrowers were more than twice as likely to “receive a high-cost or high-risk loan” than a white
15 borrower even when controlling for credit score. *Id.* ¶ 14. Indeed, the discrimination worsened as
16 the credit score increased—especially creditworthy “African-Americans with FICO scores over
17 660 were 2.570 times more likely to receive a high-cost or high-risk loan from Wells Fargo as a
18 white borrower.” *Id.* The predictable result of Wells Fargo’s foisting high-cost, high-risk loans on
19 African Americans was an explosion of foreclosures in minority communities, where loans were
20 “4.710 times more likely to result in foreclosure than is a loan in a predominantly white
21 neighborhood.” *Id.* ¶ 12. This precipitated what “many leading commentators describe[d] as the
22 ‘greatest loss of wealth for people of color in modern US history.’” *Id.* ¶ 18.

23 10. Wells Fargo discriminates against its African American employees just as readily
24 as it does its customers. In 2016, Wells Fargo was charged with systemic discrimination against
25
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28

1 minority Financial Advisors including by African American Financial Advisors in the class action
 2 lawsuit *Slaughter v. Wells Fargo Advisors*, 14-cv-06368 (N.D. Ill. 2014). Wells Fargo eventually
 3 settled the *Slaughter* litigation for over \$35 million. *Slaughter v. Wells Fargo Advisors*, 14-cv-
 4 06368 (N.D. Ill. 2014), Dkt. 99-1 (Settlement Agreement), 29

5
 6 11. Rather than earnestly trying to address and remedy the problems raised by these
 7 numerous lawsuits, Wells Fargo has worked to circumvent and diminish fair housing and credit
 8 laws, including delaying and appealing multiple fair housing lending lawsuits brought by
 9 municipalities across the Country so that it could continue to discriminate against black borrowers.⁴
 10 Wells Fargo's discrimination in lending against African Americans has therefore continued
 11 unabated.

12
 13 12. Specifically, in determining home loans, interest rates, points, etc., Wells Fargo
 14 intentionally uses factors to determine eligibility for home loan rates, terms, and conditions that
 15 facilitate redlining and reverse redlining against and disfavor African American borrowers.
 16 Specifically, Wells Fargo's uniform, nationwide policies and practices related to mortgage
 17 approvals, interest rate determinations, fees, and costs that intentionally discriminate against
 18 African Americans and have a disparate impact on African Americans. These policies and practices
 19 include but are not limited to:

20
 21 (a) placing black borrowers in predatory and higher costs loans even though
 they qualify for prime loans on better terms;

22
 23 (b) failing to underwrite loans based on traditional underwriting criteria such as
 debt-to-income ratio, loan-to-value ratio, FICO score, and work history and instead utilizing factors
 that intentionally discriminate and/or have a disparate impact on black borrowers;

24
 25 (c) subjective surcharges on minority borrowers of additional points, fees, and
 other credit and servicing costs over and above an otherwise objective risk-based financing rate for
 such loan products;

26
 27
 28 ⁴ See generally, *Oakland v. Wells Fargo*, 15-cv-04321 (N.D. Cal.); *Sacramento v. Wells Fargo*,
 18-cv-00416 (E.D. Cal.); *Miami v. Wells Fargo*, 13-cv-24508, (S.D. Fla.).

1 (d) charging excessive points and fees that are not associated with any increased
benefits to black borrowers;

2 (e) failing to adequately monitor the Bank's policies and practices regarding
3 mortgage loans, including but not limited to originations, marketing, sales, and risk management;

4 (f) Reverse redlining;

5 (g) and Redlining;

6 13. The racially discriminatory policies and practices at Wells Fargo are uniform and
7 national in scope and create an artificial, arbitrary, and unnecessary barrier to fair housing
8 opportunities for Black or African American borrowers. Class members are relying on Plaintiff to
9 protect their rights applied for loans at Wells Fargo offices across the country and were harmed by
10 these same policies and practices. Wells Fargo's policies and practices are implemented with
11 discrimination intent and/or disproportionately impact Black of African Americans borrowers.
12

13 **PLAINTIFF WAS INJURED BY DEFENDANT'S**
14 **DISCRIMINATORY POLICIES AND PRACTICES**

15 14. Williams is African American. Williams was a well-qualified African American
16 home borrower. When he applied for his mortgage, Williams maintained a FICO score of over 750.
17 Based on this, Williams believed he should have qualified for Wells Fargo's prime interest rate,
18 which would have saved him substantial money over time on his home mortgage. However,
19 consistent with Wells Fargo's pattern of discrimination against African American borrowers, Wells
20 Fargo offered Williams an interest rate nearly three points higher than the prime interest rate offered
21 by Wells Fargo, which is disproportionately and discriminatorily offered to white applicants.
22

23 15. Believing it to be a mistake, Williams spoke to Wells Fargo's home lending
24 department to have his credit report rechecked and for his interest rate to be lowered. Instead, the
25 Firm refused to reconsider his credit score or his interest rate.

26 16. Williams agreed to revisit its refusal to extend the loan to Williams on favorable
27 terms. However, in a letter dated September 5, 2019, Wells Fargo finally articulated for the first
28

1 time, that it did not use solely FICO credit scores to determine home interest rates, but instead used
2 “a unique scoring model, which considers more than credit scores to evaluate applications.”

3 17. Indeed, the “other” factors used by Wells Fargo to determine interest rates for home
4 loans serve to intentionally exclude Black or African American borrowers from affordable and
5 lower-risk loans, force African American borrowers to pay higher interest rates and other fees that
6 similarly situated white borrowers, and have a disparate impact based on race. Williams applied
7 for and received a home loan from another bank at its prime interest rate.

8 18. Williams did identify his race to Wells Fargo during the application process.

9 CLASS ALLEGATIONS

10 19. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure on behalf of himself and a class of African Americans who applied for credit related to
12 residential real estate and who were subjected to discrimination by Defendants due to their race.
13 Plaintiff seeks certification of a liability and injunctive and declaratory relief class under Rule
14 23(b)(2) and 23(c)(4), and/or certification of a broader class under Rule 23(b)(3). All requirements
15 of class certification are met by the proposed class.
16

17 20. The class of African Americans who applied for credit related to residential real
18 estate is so numerous that joinder of all members is impracticable. Fed. R.Civ.P. 23(a)(1).

19 21. There are questions of law and fact common to the class, and those questions can
20 and should be resolved in a single proceeding that furthers this litigation. Fed. R.Civ.P. 23(a)(2).

21 22. The claims alleged by Plaintiff are typical of the claims of the class. Fed. R.Civ.P.
22 23(a)(3).

23 23. Plaintiff will fairly and adequately represent and protect the interests of the class.
24 Fed. R.Civ.P. 23(a)(4).

1 24. The issue of determining liability regarding whether Defendant's policies and
2 practices result in a pattern or practice of intentional discrimination and/or have a disparate impact
3 on African Americans is appropriate for issue certification under Rule 23(c)(4). Other common
4 issues are also appropriate for certification.

5 25. Defendants have acted or refused to act on grounds that apply generally to the class,
6 so that final injunctive relief or corresponding declaratory relief is appropriate with regard to the
7 class as a whole. Fed. R.Civ.P. 23(b)(2).

8 26. The questions of law and fact common to the members of the class predominate over
9 any questions affecting only individual members, and a class action is superior to other available
10 methods for the fair and efficient adjudication of the controversy. Fed. R.Civ.P. 23(b)(3).

11 **COUNT I**

12 **EQUAL CREDIT OPPORTUNITY ACT**

13 27. Plaintiff, on behalf of himself and all those similarly situated, realleges each and
14 every paragraph above and incorporates them by reference as though fully stated herein.

15 28. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, makes it unlawful for
16 a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on
17 the basis of race.

18 29. As described above, Defendants are creditors because they regularly extend, renew,
19 and continue credit, and Plaintiff was an applicant for credit.

20 30. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan
21 origination and underwriting practices and engaged in a pattern or practice of systemic race
22 discrimination against African American mortgage loan applicants that constitutes illegal
23 intentional race discrimination in violation of the Equal Credit Opportunity Act.

32. Defendants' unlawful conduct resulted in considerable harm to Plaintiff and all those similarly situated.

33. On behalf of himself and the class he seeks to present, Plaintiff requests the relief set forth below.

**RACE DISCRIMINATION IN VIOLATION
OF 42 U.S.C. § 1981**

34. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

35. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same right to make and enforce contracts, regardless of race. The term “make and enforce” contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

36. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination and underwriting practices and engaged in a pattern or practice of systemic race discrimination against African American mortgage loan applicants that constitutes illegal intentional race discrimination in the making and modification of contracts in violation of 42 U.S.C. § 1981.

37. Plaintiff and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

38. On behalf of himself and the class he seeks to present, Plaintiff requests the relief set forth below.

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**RACE DISCRIMINATION IN VIOLATION
OF 42 U.S.C. § 1982**

39. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

40. Under 42 U.S.C. § 1982, all citizens are guaranteed the same right to inherit, purchase, lease, sell, hold, and convey real and personal property, regardless of race.

41. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination and underwriting practices and engaged in a pattern or practice of systemic race discrimination against African American mortgage loan applicants that constitutes illegal intentional race discrimination and disparately impacts African Americans in violation of 42 U.S.C. § 1982.

42. Plaintiff and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

43. On behalf of himself and the class he seeks to present, Plaintiff requests the relief set forth below.

COUNT IV

**RACE DISCRIMINATION IN VIOLATION OF
THE FAIR HOUSING ACT OF 1968, 42 U.S.C § 3601 *et seq.***

44. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

45. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business includes engaging in residential real estate-related transactions from discriminating against any person in making available such a transaction on the basis of race.

46. Defendants' business includes engaging in residential real estate-related transactions.

1 47. As set forth above, Defendants maintained a nationwide set of uniform,
2 discriminatory mortgage loan origination and underwriting practices and engaged in a pattern or
3 practice of systemic race discrimination against African American mortgage loan applicants that
4 constitutes illegal intentional race discrimination and disparately impacts African Americans in
5 violation of the Fair Housing Act of 1968.

6
7 48. Plaintiff and all those similarly situated were subjected to and harmed by
8 Defendants' systemic and individual discrimination.

9 49. On behalf of himself and the class he seeks to present, Plaintiff requests the relief
10 set forth below.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully requests that this Court find against Defendants
14 as follows:

- 15 a. Certify this case as a class action;
- 16 b. Designate Plaintiff as a Class Representative and designate Plaintiff's counsel of
17 record as Class Counsel;
- 18 c. Declare that Defendants' acts, conduct, policies and practices are unlawful and
19 violate the Equal Credit Opportunity Act, 42 U.S.C. §§ 1981 and 1982, and the Fair
20 Housing Act;
- 21 d. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination
22 against African Americans;
- 23 e. Order Plaintiff and all others similarly situated offered mortgage loans at non-
24 discriminatory rates, and otherwise make Plaintiff whole;
- 25 f. Award Plaintiff and all others similarly situated compensatory and punitive
26 damages;
27
28

- 1 i. Award Plaintiff and all others similarly situated prejudgment interest and attorneys
2 fees, costs and disbursements, as provided by law;
3 j. Award Plaintiff and all others similarly situated such other make whole equitable,
4 injunctive and legal relief as this Court deems just and proper to end the
5 discrimination and fairly compensate Plaintiff and all others similarly situated.
6 k. Award Plaintiff and all others similarly situated such other relief as this Court deems
7 just and proper.
8

9 Respectfully submitted,

10 STOWELL & FRIEDMAN, LTD.

11 By: _____
12 Linda D. Friedman (pro hac vice to be requested)
13 Daniel Lewin (pro hac vice to be requested)
14 Jared Calvert (pro hac vice to be requested)
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28 Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure and Civil Local Rule 3-6.

STOWELL & FRIEDMAN, LTD.

By: _____
Linda D. Friedman (pro hac vice to be requested)
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Attorneys for Plaintiffs
CHRISTOPHER WILLIAMS, SAM ALBURY, AND SHAIA BECKWITH SIMMONS,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CHRISTOPHER WILLIAMS, SAM ALBURY,
and SHAIA BECKWITH SIMMONS, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A. and WELLS
FARGO & CO.,

Defendant.

CASE NO: 3:22-cv-00990-JD

AMENDED COMPLAINT

Class Action

Jury Trial Demanded

Hon. James Donato

AMENDED
COMPLAINT

AMENDED COMPLAINT
CLASS ACTION

Plaintiffs Christopher Williams (“Williams”), Sam Albury (“Albury”), and Shaia Beckwith Simmons (“Simmons”), on behalf of themselves and all others similarly situated, by and through their attorneys, hereby file this Amended Complaint against Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (collectively “Wells Fargo” or the “Firm”), and state as follows:

JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d), as the amount in controversy exceeds \$5,000,000, and at least one member of the class is a citizen of a different state than any defendant. Plaintiff Williams is a citizen of Georgia, Plaintiff Albury is a citizen of Nevada, Plaintiff Simmons is a citizen of Florida, and neither Defendant is a citizen of Georgia, Nevada, or Florida. Defendant Wells Fargo & Co. is incorporated in Delaware and its principal place of business is in San Francisco, California, as set forth further below. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in South Dakota and with its principal place of business in San Francisco, California.

2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because both Defendants reside in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District, as the discriminatory policies emanated and were executed from Wells Fargo’s headquarters in this District. Venue is proper in the San Francisco Division of the Northern District of California because a substantial part of the events or omissions giving rise to the claims occurred in the county of San Francisco.

PARTIES

3. Defendant Wells Fargo & Co. is a publicly-traded, global financial services firm and Fortune 500 corporation incorporated in Delaware and has its principal place of business in San Francisco, California. As of December 31, 2020, Wells Fargo has assets of approximately \$1.9 trillion, loans of \$887.6 billion, deposits of \$1.4 trillion and stockholders' equity of \$185 billion.¹ Wells Fargo provides a wide variety of financial products and services to its global and domestic clients, who include corporations, governments, financial institutions and individuals, including home mortgages. Wells Fargo claims to serve at least one out of three households in the United States.²

4. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in South Dakota with its principal place of business in San Francisco, California, and a subsidiary of Wells Fargo & Co.

5. Plaintiff Christopher Williams is African American and a citizen of Georgia. As described below, Williams applied for a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

6. Plaintiff Sam Albury is African American and a citizen of Nevada. As described below, Albury applied for a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

7. Plaintiff Shaia Beckwith Simmons is African American and a citizen of Florida. As described below, Plaintiff Simmons obtained a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

¹ <https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2020/10k.pdf>

² [https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20\(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)

FACTUAL ALLEGATIONS

8. As stated above, Wells Fargo is one of the largest banks in the country and one of the top residential mortgage providers in the United States. Across the country, Wells Fargo applies mortgage origination, approvals, interest rate determinations, fees, costs, refinancing, underwriting, deferment, forbearance, default, and foreclosure policies and practices that intentionally and disproportionately discriminate against and harm Black and/or African American home loan applicants and home mortgage borrowers. Williams, Albury, and Simmons were injured by Wells Fargo's racially discriminatory residential mortgage policies and practices.

9. Wells Fargo has a long history of racial discrimination and maintains a corporate culture replete with harmful racial stereotypes and biased views about Black and/or African American customers.

10. Wells Fargo discriminates against Black and/or African American customers throughout its lending process, from application—where Wells Fargo disproportionately denies credit to Black and/or African American applicants—to origination—where Wells Fargo disproportionately charges higher interest rates, imposes higher fees and costs, and offers worse terms to Black and/or African Americans compared to non-Black, non-African Americans—to refinancing—where Wells Fargo disproportionately denies Black and/or African Americans the opportunity to modify or lower their interest rates—and servicing—where Black and/or African American borrowers are subjected to additional racial discrimination.

11. Wells Fargo engages in redlining by approving white applicants for mortgage loans at substantially higher rates than Black and/or African American applicants. In 2020, for instance, according to an analysis of nationwide data published under the Home Mortgage Disclosure Act, Wells Fargo approved approximately 67.1% of white borrowers who applied for a mortgage, compared to only 51.8% of Black and/or African American applicants.

1 12. When evaluating statistical disparities like the one described above, statisticians
2 use a tool called the “standard deviation” to assess the likelihood that the disparity is due to
3 chance. The more standard deviations, the more the observed result deviates from the expected
4 result and the less likely that the disparity is due to random chance. Courts and statisticians
5 consider a disparity “statistically significant”—that there is a 95% level of confidence that
6 random chance did not cause the disparity—at 1.96 standard deviations. In this case, the
7 difference in approvals is statistically significant at *over 29 standard deviations*.

9 13. When Wells Fargo approves Black and/or African American borrowers’ mortgage
10 applications, it does so on substantially worse terms than offered to non-Black, non-African
11 American borrowers. Nationwide, in 2020, the average interest rate Wells Fargo charged to Black
12 and/or African American borrowers was 3.34%, versus 3.23% to white borrowers. The difference
13 is statistically significant at over 17 standard deviations.

15 14. Wells Fargo also imposes higher costs on Black and/or African American
16 borrowers relative to the size of their loans. In 2020, Black and/or African American borrowers
17 nationwide had to spend, on average, 2.0% of their Wells Fargo loan value on costs and fees,
18 versus 1.7% for white borrowers. The disparity is statistically significant at 9 standard deviations.

19 15. Wells Fargo has faced a number of recent lawsuits and settlements challenging
20 these practices and disparities. For example, in 2011, a jury found Wells Fargo guilty of
21 systematically discriminating against minority home buyers by using a computer software for
22 minority homeowners which resulted in them paying more for their home loans than white
23 borrowers. *Opal Jones, et. al v. Wells Fargo Bank, N.A., et al.*, Case No. BC337821 (Los Angeles
24 Superior Court) (\$3.5 million verdict). Wells Fargo has also paid hundreds of millions of dollars
25 to avoid litigating its discriminatory home lending practices. Indeed, Wells Fargo agreed to a
26 settlement valued at over \$440 million of a lawsuit challenging the Firm’s redlining practices,
27
28

1 resulting in a disproportionate number of foreclosures in African American neighborhoods in
2 Shelby County and the City of Memphis. *City of Memphis and Shelby County, et al. v. Wells*
3 *Fargo Bank, N.A., et al.*, Case No. 2:09-CV-02857 (W.D. Tenn.). Wells Fargo also settled a
4 lawsuit for \$37 million led by the National Fair Housing Alliance alleging that Wells Fargo took
5 better care of foreclosed properties that it owned in white neighborhoods than those in African
6 American and Latino communities. *National Fair Housing Alliance, et al. v. Wells Fargo Bank*
7 *N.A., et al.*, HUD Case No. 09-12-0708-8 (U.S. Department of Housing & Urban Development
8 Office of Fair Housing & Equal Opportunity).

10 16. Wells Fargo has also faced and settled numerous lawsuits challenging its “reverse
11 redlining” practices of charging higher rates and imposing less favorable terms for minority home
12 borrowers than for white home borrowers. For instance, in 2013, Wells Fargo paid \$175 million
13 to settle a lawsuit brought by the United States Department of Justice alleging that the Firm
14 charged higher rates to its African American and Latino borrowers. *United States v. Wells Fargo*
15 *Bank, NA*, Case No. 1:12-cv-01150 (D.D.C.).

17 17. In 2019, Wells Fargo paid \$10 million to settle a similar claim brought by the City
18 of Philadelphia. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D.
19 Pa. 2019). Philadelphia alleged that Wells Fargo simply swapped the evil of redlining—refusing
20 to lend to minority communities—for the similarly pernicious reverse redlining—lending to
21 minority borrowers, but saddling them with more expensive loans with worse terms than those
22 extended to white borrowers. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-
23 02203-AB (E.D. Pa. 2019), Dkt. 1 (Complaint) ¶¶ 5–21. Philadelphia alleged that “since at least
24 2004 . . . Wells Fargo has systematically engaged in a continuous and unbroken discriminatory
25 pattern and practice of issuing higher cost or more onerous mortgage loans to minority borrowers
26 in Philadelphia when more favorable and less expensive loans were being offered to similarly
27
28

1 situated non-minority borrowers.” *Id.* ¶ 5 (E.D. Pa.). Philadelphia’s statistical analysis revealed
 2 that African American borrowers were more than twice as likely to “receive a high-cost or high-
 3 risk loan” than a white borrower even when controlling for credit score. *Id.* ¶ 14. Indeed, the
 4 discrimination worsened as the credit score increased—especially creditworthy “African-
 5 Americans with FICO scores over 660 were 2.570 times more likely to receive a high-cost or
 6 high-risk loan from Wells Fargo as a white borrower.” *Id.* The predictable result of Wells Fargo’s
 7 foisting high-cost, high-risk loans on African Americans was an explosion of foreclosures in
 8 minority communities, where loans were “4.710 times more likely to result in foreclosure than is
 9 a loan in a predominantly white neighborhood.” *Id.* ¶ 12. This precipitated what “many leading
 10 commentators describe[d] as the ‘greatest loss of wealth for people of color in modern US
 11 history.’” *Id.* ¶ 18.

12
 13
 14 18. Wells Fargo has found new avenues to discriminate against Black and/or African
 15 American customers with recent changes to the home mortgage market. Nationwide, homeowners
 16 have had the opportunity to take advantage of historically low interest rates through refinancing,
 17 which occurs when a homeowner applies for credit related to their residential real estate to change
 18 the terms of an earlier loan. Over the last two years, U.S. homeowners refinanced almost \$5
 19 trillion in mortgages, generating untold savings.³ This could have been an opportunity for African
 20 American homeowners to build wealth and secure their families’ futures.

21
 22 19. Wells Fargo, however, systematically and intentionally shut Black and/or African
 23 American customers out of this major wealth event. According to an analysis of 2020 Home
 24 Mortgage Disclosure Act data, Wells Fargo approved 33.7% of refinancing applications from
 25 Black and/or African American applicants, compared with 49.1% from white applicants. Wells
 26
 27

28 ³ <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>

1 Fargo denied Black and/or African Americans borrowers' applications outright 36.1% of the
 2 time, versus 20.3% of the time for white borrowers. These disparities are statistically significant
 3 at over 31 standard deviations.

4 20. And just as it does with home purchase loans, Wells Fargo charges higher costs
 5 and interest rates to Black and/or African American customers who obtain refinancing. In 2020,
 6 Wells Fargo charged the average national Black and/or African American refinancing recipient
 7 3.18% versus 3.11% for white refinancing recipients, and charged Black and/or African American
 8 customers an average of \$5,335 in costs and fees versus \$4,193 for white borrowers, for an
 9 average cost of borrowing of 2.6% for Black and/or African American customers versus 1.8% for
 10 white borrowers. All these disparities are statistically significant.

11 21. Wells Fargo's failure to extend refinancing and other home loans to Black and/or
 12 African American customers has even drawn the attention of members of Congress. Senators
 13 Elizabeth Warren and Ron Wyden recently wrote a letter to Wells Fargo's Chief Executive
 14 Officer Charles Scharf excoriating the Bank for its "shocking disparity" in its approval ratings of
 15 Black and/or African American refinancing applicants.⁴ The Senators stated that Wells Fargo's
 16 recent actions were consistent with "Wells Fargo's long history of scamming and mistreating
 17 consumers of color."⁵ Furthermore, the Senators believed "Wells Fargo's treatment of Black
 18 borrowers is deeply concerning, no matter how one looks at the data" and concluded, "Wells
 19 Fargo appears to be simply unable or unwilling to stop preying upon customers of color."⁶

20 22. Wells Fargo discriminates against its African American employees just as readily
 21 as it does its customers. In 2016, Wells Fargo was charged with systemic discrimination against
 22

23
 24
 25
 26 ⁴Letter from Senators Elizabeth Warren and Ron Wyden, March 16, 2022
 27 <https://www.warren.senate.gov/imo/media/doc/2022.3.16%20Letter%20to%20Wells%20Fargo%20on%20Refinancing%20Discrimination.pdf>

28 ⁵ *Id.*

⁶ *Id.*

1 minority Financial Advisors including by African American Financial Advisors in the class action
2 lawsuit *Slaughter v. Wells Fargo Advisors*, 14-cv-06368 (N.D Ill. 2014). Wells Fargo eventually
3 settled the *Slaughter* litigation for over \$35 million. *Slaughter v. Wells Fargo Advisors*, 14-cv-
4 06368 (N.D Ill. 2014), Dkt. 99-1.

5
6 23. In determining home loans, interest rates, points, and other credit and contractual
7 terms, Wells Fargo intentionally uses factors to determine eligibility for home loan rates, terms,
8 and conditions that facilitate redlining and reverse redlining against and disfavor Black and/or
9 African American applicants.

10 24. Many traditional techniques for determining creditworthiness, such as FICO score,
11 debt-to-income ratio, and work history, have been demonstrated to cause an unlawful disparate
12 impact against Black borrowers and/or African Americans. Wells Fargo, however, employs an
13 even more discriminatory “unique scoring model” that eschews even these traditionally
14 discriminatory origination and underwriting techniques. Wells Fargo thereby intentionally
15 discriminates and creates an unlawful disparate impact against Black and/or African American
16 mortgage applicants, including applicants for refinancing.

17
18 25. Additionally, pursuant to its Firm-wide discriminatory culture, Wells Fargo unduly
19 scrutinizes and is unduly skeptical of the application materials submitted by Black and/or African
20 American applicants, causing undue delays and rejections of Black and/or African American
21 mortgage applicants, including applicants for refinancing.

22
23 26. In the rare case Wells Fargo offers mortgage loans to Black and/or African
24 American customers on reasonable terms, Wells Fargo engages in predatory lending practices to
25 force Black and/or African American borrowers out of those terms, including pressuring Black
26 and/or African American borrowers to increase their rates by improperly treating Black and/or
27 African American borrowers’ loans in default and instituting improper foreclosures.
28

1 27. The racially discriminatory policies and practices at Wells Fargo are uniform and
2 national in scope and create an artificial, arbitrary, and unnecessary barrier to fair housing
3 opportunities for Black and/or African American borrowers. Class members who applied for
4 loans at Wells Fargo offices across the country and were harmed by these same policies and
5 practices are relying on Plaintiffs and this lawsuit to protect their rights. Wells Fargo's policies
6 are practices are implemented with discriminatory intent and/or disproportionately impact Black
7 and/or African Americans borrowers.

9 **PLAINTIFFS WERE INJURED BY DEFENDANTS'**
10 **DISCRIMINATORY POLICIES AND PRACTICES**

11 **Christopher Williams**

12 28. Williams is African American. Williams was a well-qualified African American
13 home borrower. When he applied for his mortgage loan, Williams was highly creditworthy, as
14 reflected in his high FICO score of over 750. Based on this, Williams believed he should have
15 qualified for Wells Fargo's prime interest rate, which would have saved him substantial money
16 over time on his home mortgage. However, consistent with Wells Fargo's pattern of
17 discrimination against African American borrowers, Wells Fargo offered Williams an interest rate
18 nearly three points higher than the prime interest rate offered by Wells Fargo, which is
19 disproportionately and discriminatorily offered to white applicants.

21 29. Believing it to be a mistake, Williams spoke to Wells Fargo's home lending
22 department to have his credit report rechecked and for his interest rate to be lowered. Instead, the
23 Firm refused to reconsider his credit score or his interest rate.

24 30. Wells Fargo agreed to revisit its refusal to extend the loan to Williams on
25 favorable terms. However, in a letter dated September 5, 2019, Wells Fargo finally articulated for
26 the first time, that it did not use solely FICO credit scores to determine home interest rates, but
27

1 instead used “a unique scoring model, which considers more than credit scores to evaluate
2 applications.”

3 31. Indeed, the “other” factors used by Wells Fargo to determine interest rates for
4 home loans serve to intentionally exclude Black and/or African American borrowers from
5 affordable and lower-risk loans, force Black and/or African American borrowers to pay higher
6 interest rates and other fees that similarly situated white borrowers, and have a disparate impact
7 based on race. Williams applied for and received a home loan from another bank at its prime
8 interest rate.
9

10 32. Williams identified his race to Wells Fargo during the application process.

11 **Sam Albury**

12 33. Plaintiff Albury is African American. Albury is a well-qualified African American
13 home borrower. When he applied for his mortgage, Albury was gainfully employed, had already
14 owned two properties, and was highly creditworthy. In or around June 2020, Albury agreed to
15 purchase a new home in Las Vegas, Nevada. To do so, Albury agreed to close on the property in
16 35 days and paid the buyer a considerable amount of earnest money. Despite being warned not to
17 use Wells Fargo by his realtor, Albury believed he would receive a prime mortgage due to his
18 preexisting banking relationship with Wells Fargo.
19

20 34. However, consistent with Wells Fargo’s pattern of discrimination against Black
21 and/or African American borrowers across the country, Wells Fargo offered Albury an interest
22 rate higher than the prime interest rate offered by Wells Fargo to white applicants. Wells Fargo
23 also unduly scrutinized his application and subjected him to baseless inquiries regarding his
24 finances and work history. Worried that Wells Fargo would not approve his mortgage application
25 in time for the scheduled closing, Albury answered all of Wells Fargo’s baseless inquiries.
26
27
28

1 35. Wells Fargo continued to string Albury along until, just days before his scheduled
2 closing, Wells Fargo denied his application in full. Wells Fargo's actions forced Albury to walk
3 away from his home purchase, thereby forfeiting thousands of dollars in earnest money.

4 **Shaia Beckwith Simmons**

5 36. Plaintiff Shaia Beckwith Simmons is a public relations expert, community
6 advocate, and motivational speaker, with a Bachelor's in Business Administration and
7 Management and a Master's in Educational Leadership and Administration from Florida A&M
8 University. She and her husband, the head coach of Florida A&M's Division I football team, are
9 pillars of their local community.

10 37. Simmons is a well-qualified African American home borrower who obtained a
11 home mortgage loan from Wells Fargo in 2009 and refinanced it for a lower interest rate in 2013.

12 38. Simmons is a model homeowner and has timely made her monthly payments
13 without incident. During the COVID-19 pandemic, as required by the CARES Act, Wells Fargo
14 offered existing home mortgage borrowers the option to defer their payments. Simmons accepted
15 Wells Fargo's deferment option, which allowed her to restructure her loan to defer monthly
16 payments during the pandemic and instead make those monthly payments at the end of her loan.

17 39. After several months of approved deferments, Simmons promptly resumed making
18 her mortgage payments in full, as she had done for decades without issue.

19 40. Yet consistent with its nationwide discriminatory practices, Wells Fargo
20 maliciously and unlawfully instituted foreclosure proceedings against Simmons without prior
21 notice, asserting without justification that Simmons was in default for failure to make mortgage
22 payments during her deferment.

23 41. Consistent with its nationwide practices of predatory lending to extract wealth
24 from Black and/or African American customers, Wells Fargo presented Simmons with an
25

1 ultimatum: she could renegotiate her loan, potentially at a higher interest rate that would cost her
2 many thousands of dollars over the remaining life of the loan, or Wells Fargo would persist with
3 the unjustified foreclosure to take her home away from her and resell it in a booming market.

4 42. Simmons refused to renegotiate her loan and is resisting the wrongful foreclosure,
5 which remains pending.

6 43. Wells Fargo's unlawful actions have caused Simmons emotional distress, and the
7 pendency of the wrongful foreclosure and filing of a lis pendens against her property have
8 damaged Simmons's credit rating, causing further injury.

9 CLASS ALLEGATIONS

10 44. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure on behalf of himself and a class of Black and/or African American applicants or
12 borrowers who applied for, received, or maintained credit from Defendants related to residential
13 real estate and who were subjected to discrimination by Defendants due to their race. Plaintiffs
14 seek certification of a liability and injunctive and declaratory relief class under Rule 23(b)(2) and
15 23(c)(4), and/or certification of a broader class under Rule 23(b)(3). All requirements of class
16 certification are met by the proposed class.

17 45. The class of Black and/or African American participants in Wells Fargo's home
18 lending process is so numerous that joinder of all members is impracticable. Fed. R. Civ. P.
19 23(a)(1).

20 46. There are questions of law and fact common to the class, and those questions can
21 and should be resolved in a single proceeding that furthers this litigation. Fed. R. Civ. P. 23(a)(2).

22 47. The claims alleged by Plaintiffs are typical of the claims of the class. Fed. R. Civ.
23 P. 23(a)(3).

50. Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with regard to the class as a whole. Fed. R. Civ. P. 23(b)(2).

COUNT I

52. Plaintiffs, on behalf of themselves and all those similarly situated, reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

54. As described above, Defendants are creditors because they regularly extend, renew, and continue credit, and Plaintiffs were applicants for credit.

AMENDED
COMPLAINT

1 systemic race discrimination against Black and/or African American mortgage loan applicants
2 and borrowers that constitutes illegal intentional race discrimination in violation of the Equal
3 Credit Opportunity Act.

4 56. Plaintiffs and all those similarly situated were subjected to and harmed by
5 Defendant's systemic and individual discrimination.
6

7 57. Defendants' unlawful conduct resulted in considerable harm to Plaintiffs and all
8 those similarly situated.

9 58. On behalf of themselves and the class they seek to present, Plaintiffs request the
10 relief set forth below.

11 **COUNT II**

12 **RACE DISCRIMINATION IN VIOLATION**
13 **OF 42 U.S.C. § 1981**

14 59. Plaintiffs, on behalf of themselves and all those similarly situated, reallege each
15 and every paragraph above and incorporate them by reference as though fully stated herein.
16

17 60. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same right to
18 make and enforce contracts, regardless of race. The term "make and enforce" contracts includes
19 the making, performance, modification, and termination of contracts, and the enjoyment of all
20 benefits, privileges, terms, and conditions of the contractual relationship.

21 61. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan
22 origination, refinancing, and underwriting practices and engaged in a pattern or practice of
23 systemic race discrimination against Black and/or African American mortgage loan applicants
24 and borrowers that constitutes illegal intentional race discrimination in the making and
25 modification of contracts in violation of 42 U.S.C. § 1981.
26
27
28

62. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

63. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

COUNT III

RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1982

64. Plaintiffs reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

65. Under 42 U.S.C. § 1982, all citizens are guaranteed the same right to inherit, purchase, lease, sell, hold, and convey real and personal property, regardless of race.

66. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American applicants and borrowers in violation of 42 U.S.C. § 1982.

67. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

68. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

COUNT IV

**RACE DISCRIMINATION IN VIOLATION OF
THE FAIR HOUSING ACT OF 1968, 42 U.S.C § 3601 *et seq.***

69. Plaintiffs reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

70. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business includes engaging in residential real estate-related transactions from discriminating against any person in making available such a transaction on the basis of race.

71. Defendants' business includes engaging in residential real estate-related transactions.

72. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American mortgage loan applicants and borrowers in violation of the Fair Housing Act of 1968.

73. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

74. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court find against Defendants as follows:

a. Certify this case as a class action;

- b. Designate Plaintiffs as Class Representatives and designate Plaintiffs' counsel of record as Class Counsel;
- c. Declare that Defendants' acts, conduct, policies and practices are unlawful and violate the Equal Credit Opportunity Act, 42 U.S.C. §§ 1981 and 1982, and the Fair Housing Act;
- d. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination against Black and/or African American applicants and borrowers;
- e. Order Plaintiffs and all others similarly situated offered mortgage loans at non-discriminatory rates, and otherwise make Plaintiffs whole;
- f. Award Plaintiffs and all others similarly situated compensatory and punitive damages;
- i. Award Plaintiffs and all others similarly situated prejudgment interest and attorneys fees, costs and disbursements, as provided by law;
- j. Award Plaintiffs and all others similarly situated such other make whole equitable, injunctive and legal relief as this Court deems just and proper to end the discrimination and fairly compensate Plaintiffs and all others similarly situated.
- k. Award Plaintiffs and all others similarly situated such other relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure and Civil Local Rule 3-6.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ALFRED POPE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A., WELLS
FARGO & COMPANY,

Defendants.

Case No.: 4:22-cv-01793-KAW

**AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff alleges upon personal knowledge as to himself and his own actions, and upon information and belief, including the investigation of counsel, as follows:

I. NATURE OF THE ACTION

1. Spurred in part by the COVID-19 pandemic, low interest rates allowed American homeowners to refinance their home mortgages at more favorable interest rates from 2019 through present (the “Class Period”).

2. Plaintiff, and members of the putative Class (the “Class”), seek damages for Defendants’ -- Wells Fargo Bank, N.A. and Wells Fargo & Company (collectively, “Wells Fargo”) -- discriminatory practices in denying their applications to refinance their Wells Fargo mortgage loans in violation of the federal Fair Housing and Fair Lending acts, as well as state consumer protection laws. Indeed, according to recent investigations of Wells Fargo’s refinance activity during the Class Period that have been publicized in the media, Wells Fargo approved white applicants’ mortgage refinance requests at twice the rate of its approval of Black and Hispanic/Latino minority applicants’ refinance requests in numerous areas across the United States.¹ Plaintiff’s own analysis of Wells Fargo’s mortgage refinance rates bears this out.

3. This is no accident. For nearly two decades, Wells Fargo exploited the American dream of home ownership through discriminatory housing practices in violation of the FHA, including by making a disproportionately higher number of subprime and higher cost mortgage loans to minorities than to white borrowers, and then discriminatorily foreclosing on minority mortgage loans in higher minority concentration neighborhoods compared to white neighborhoods. Such reprehensible conduct has stripped many Wells Fargo minority customers of their single greatest asset – the equity value in their homes.

4. To add further injury to the insult Wells Fargo’s minority customers have already sustained, Wells Fargo is now discriminatorily refusing to refinance minority higher cost

¹ Shawn Donnan, Ann Choi, Hannah Levitt, and Christopher Cannon, “Wells Fargo Left Black Homeowners Behind in Pandemic Mortgage Refinancing Boom,” Bloomberg (Online) (March 11, 2022), at <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>; See also J.J. McCorvey and Julia Carpenter, “Millions of Americans Refinanced Last Year – but Fewer Black and Latino Homeowners Did,” WALL STREET JOURNAL (June 25, 2021), at <https://www.wsj.com/articles/millions-of-americans-refinanced-last-year-but-fewer-black-and-latino-homeowners-did-11624440601>.

1 mortgages. Such reprehensible conduct begs the question why any minority would ever bank with
 2 this institution. Indeed, as Wells Fargo's CEO Charles Scharf has publicly acknowledged in
 3 Congressional testimony, Wells Fargo engaged in predatory and discriminatory mortgage lending
 4 and servicing practices, as well as fraudulent customer account practices.² And, as CEO Scharf
 5 further admitted in relatively recent media reports, Wells Fargo has an institutional, discriminatory
 6 bias.³

7 5. Plaintiff and members of the putative Class have suffered harm due to the
 8 discriminatory tactics used by the Defendants with respect to their rejections of minority and
 9 female homeowners seeking the ability to refinance their mortgages. Due to this conduct, Plaintiff
 10 and members of the putative Class bring this Action under federal and state law against the
 11 Defendants for damages, injunctive relief, attorney's fees, and any other relief this Court deems
 12 just and proper.
 13

14 II. JURISDICTION AND VENUE

15 6. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C.
 16 §§ 1331, 1332(d), and 1343, because the Plaintiff asserts federal causes of action, because Plaintiff
 17 assert civil rights causes of action, and because at least one member of the Class is a citizen of a
 18 different state than all Defendants, and because the amount in controversy exceeds \$5,000,000.

19 7. Personal jurisdiction is appropriate over Defendants because Wells Fargo Bank,
 20 N.A. transacts business in the State of California and has its principal place of business in San
 21 Francisco, California. Wells Fargo Home Mortgage, Inc. originates loans to California customers
 22 from its California offices and maintains a systematic and continuous presence in the State.
 23
 24
 25

26 ² Wells Fargo CEO Charles Scharf admitted these failings in congressional testimony. *See* <https://financialservices.house.gov/uploadedfiles/chr-116hrg428866.pdf> at 9 (last visited Jan. 13, 2022) (testifying that he did not disagree with the Report's findings, and that "the series of behavior that is described should have never happened at the company. The failures that are described a direct result of us not managing the company properly"); *id.* at 5 ("[W]e had a flawed business model in how the company was managed").

27 ³ *See, e.g.,* <https://www.businesswire.com/news/home/20200923005604/en/> (last visited March 19, 2022) (discussing CEO Scharf's unconscious bias); *see also* <https://www.charlotteobserver.com/news/business/banking/article246012155.html> (Jimmie Paschall, Wells Fargo's head of enterprise diversity and inclusion, revealed: "There definitely is a sense that bias lives vibrantly at Wells Fargo. And I think it is around gender, gender identity, as well as race and ethnicity.")
 28

1 8. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
2 1391(b) because Wells Fargo Bank, N.A. resides in this district, a substantial part of the events or
3 omissions giving rise to the claim occurred in this district, and Wells Fargo Bank, N.A.'s principal
4 place of business is in this district.

5 **INTRADISTRICT ASSIGNMENT**

6 9. This action is properly assigned to the San Francisco Division of this District
7 pursuant to N.D. Cal. L.R. 3-2, because Defendant Wells Fargo & Company is headquartered in
8 San Francisco, California, which is served by the San Francisco Division.

9 **III. PARTIES**

10 **10. Plaintiff.**

11 11. Plaintiff Alfred Pope is a minority homeowner who owns equity in a home located
12 in Chesapeake, Virginia. Plaintiff Pope applied for a Wells Fargo home refinance in September of
13 2021 and his application was denied.

14 **12. Defendants.**

15 13. Defendant Wells Fargo Bank, N.A. is a nationally chartered bank with its principal
16 place of business located in Sioux Falls, South Dakota and is chartered in Wilmington, Delaware.

17 14. Defendant Wells Fargo & Company is Defendant Wells Fargo Bank, N.A.'s parent
18 company and is headquartered in San Francisco, California with its principal place of business
19 located in Manhattan, New York, New York.

20 **IV. FACTUAL ALLEGATIONS**

21 **A. Wells Fargo, the Home Mortgage Industry, and Home Mortgage Refinancing**

22 15. Wells Fargo is one of the Country's largest first and second lien mortgage lenders.
23 Included within that line of business are its new mortgages derived from refinancing existing home
24 mortgages.
25

26 16. Refinancing an existing mortgage allows a borrower to try to obtain better terms
27 including, for example, a lower interest rate. A lower mortgage interest rate enables a borrower to
28

1 save hundreds, if not thousands, of dollars per year on interest charges. As Wells Fargo explains
 2 on “Why Refinance a Mortgage” page on its website, refinancing a mortgage enables a borrower:
 3 (1) to tap into home equity (using the equity established in the home in order to get a cash-out
 4 refinance where the bank gives the borrower cash in exchange for that equity in order to pay other
 5 loans or credit card debt), (2) take advantage of lower [interest] rates (which reduce the monthly
 6 payments and the total interest paid out over the duration of the loan), (3) change your loan term
 7 (to shorten or lengthen the loan term length), and (4) to convert to an adjustable rate mortgage or
 8 a fixed-rate mortgage.⁴

9
 10 17. Conversely, the denial of refinance applications means that a mortgage borrower
 11 must continue to pay higher mortgage costs. Brookings Institute senior fellow Andre Perry states
 12 that the inability of Black homeowners to refinance their home mortgage loans “means people
 13 have less resources to invest in their children, less resources to start businesses, less resources to
 14 renovate their homes, less resources to buy additional homes.”⁵ This, in the aggregate, widens the
 15 racial wealth gap in the United States.

16 **B. The Pandemic-induced Interest Rates Made Mortgage Refinancing Attractive to** 17 **Homeowners**

18 18. During the Class Period, interest rates dropped substantially due to economic
 19 pressures caused by the COVID-19 pandemic – this made refinancing more attractive for mortgage
 20 holders.

21 19. A study by the Federal Reserve Bank of Boston concluded the following:

- 22 a. The typical refinance during the Class Period reduced borrowers’ monthly
 23 payments by \$279 per month, leading to a total payment reduction of \$5.3 billion
 24 per year in the United States for all households that refinanced.⁶

25
 26
 27 ⁴ <https://www.wellsfargo.com/mortgage/mortgage-refinance/why-refinance/>, (last accessed Mar. 7, 2022).

⁵ *Id.*

28 ⁶ Larry Bean, “Fed study: Minority borrowers bore the brunt of COVID-19’s impact on the mortgage market,” FEDERAL RESERVE BANK OF BOSTON (June 22, 2021), at <https://www.bostonfed.org/news-and-events/news/2021/06/minority-borrowers-bear-brunt-of-covid-19-impact-on-mortgage-market.aspx>.

b. However, only \$198 million, or 3.7% of the total payment reduction of \$5.3 billion, went to Black households.⁷

c. This is especially problematic considering that Black households account for over 13% of the entire United States population and over 9% of all homeowners.⁸

d. Additionally, the study concluded that white homeowners were approved at twice the rate of Black homeowners with respect to mortgage refinancing during the Class Period.⁹

20. The study found that, “[c]ompared with white borrowers, Black borrowers on average have lower credit scores and higher loan-to-value ratios [which are] risk factors that can prevent someone from refinancing and reducing their monthly mortgage payments. However, when authors [of the study] control for these factors, they find that before the pandemic, Black and white borrowers were roughly equally likely to refinance. After the pandemic began and interest rates plummeted, Black homeowners were 40% less likely than white homeowners to finance, holding equal the risk factors for both groups.”¹⁰

21. Critically, the authors of the study concluded, “borrowers who could use the payment reductions the most moving forward may be the least likely to obtain them.”¹¹

C. Due to the Discriminatory Conduct of the Defendants, Plaintiff and the Members of the Putative Class Were Denied Refinancing Opportunities by Defendants’ Bank, Wells Fargo

22. Wells Fargo has engaged in discriminatory practices that disparately reduce the number of home mortgage refinance requests by minority applicants. With respect to minority applicants, these tactics, taken generally, are called “redlining.”

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

23. The term “redlining” has its roots in New Deal-era racism, which limited minority access to housing opportunities. Historically, the concept of redlining comes “from government maps that outlined areas where Black residents lived and therefore were deemed more risky [real estate] investments.”¹²

24. In the past, redlining took place through the use of mapping where Black neighborhoods were and consisted of coloring those neighborhoods “red” as to denote that they were high risk investments because of the populations that inhabited them. In the modern day, redlining takes place usually through an algorithmic bias which considers multiple factors tied to race (such as ZIP code, education, area code, census tract, average home values, and other factors) and uses them in the decision of whether to approve a home mortgage refinancing application.

25. For example, the refinancing calculator on Wells Fargo’s website, utilizes a digitized algorithmic tool that assesses creditworthiness and other factors to offer estimated refinance rates. The tool asks for inputs for factors that are proxies for minority homeowner status, such as geography (Wells Fargo notes: “[Refinancing] [r]ates can vary by location”)¹³ and credit score (to which Wells Fargo gives four options: Excellent, Good, Fair, or Poor/Limited).¹⁴

26. On its refinance applications, hosted by Blend Labs, Inc., the digitized algorithmic tool (which assesses creditworthiness and other factors to lock in a home mortgage refinance interest rate) also asks for information that can be proxies for race, including “demographic information,” employment and income information, real estate holdings by the applicant, and other information.¹⁵

¹² Candace Jackson, “What is Redlining?,” NYTIMES (ONLINE) (Aug. 17, 2021), at <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>.

¹³ <https://www.wellsfargo.com/mortgage/mortgage-refinance/why-refinance/>, (last accessed Mar. 7, 2022).

¹⁴ *Id.*

¹⁵ <https://yourmortgageapp.wf.com/section/Getting%20Started/task/BORROWER/3652fd6a-b3e4-4308-bfa8-a92e9f4bbb83>, (last accessed Mar. 7, 2022).

1 27. Wells Fargo's use of these factors has resulted in discrimination by disparately
2 denying minority and female applicants' refinance applications at rates far in excess of denial rates
3 experienced by white borrowers.

4 **D. Due to the Discriminatory Conduct of the Defendants, Plaintiff and the Members**
5 **of the Putative Class Were Harmed**

6 28. Plaintiff and members of the putative Class were harmed because they were either
7 denied the ability to refinance their home mortgages entirely due to Wells Fargo's conduct
8 described herein, or they were given less favorable terms than white borrowers who similarly
9 refinanced their home mortgages through Wells Fargo.

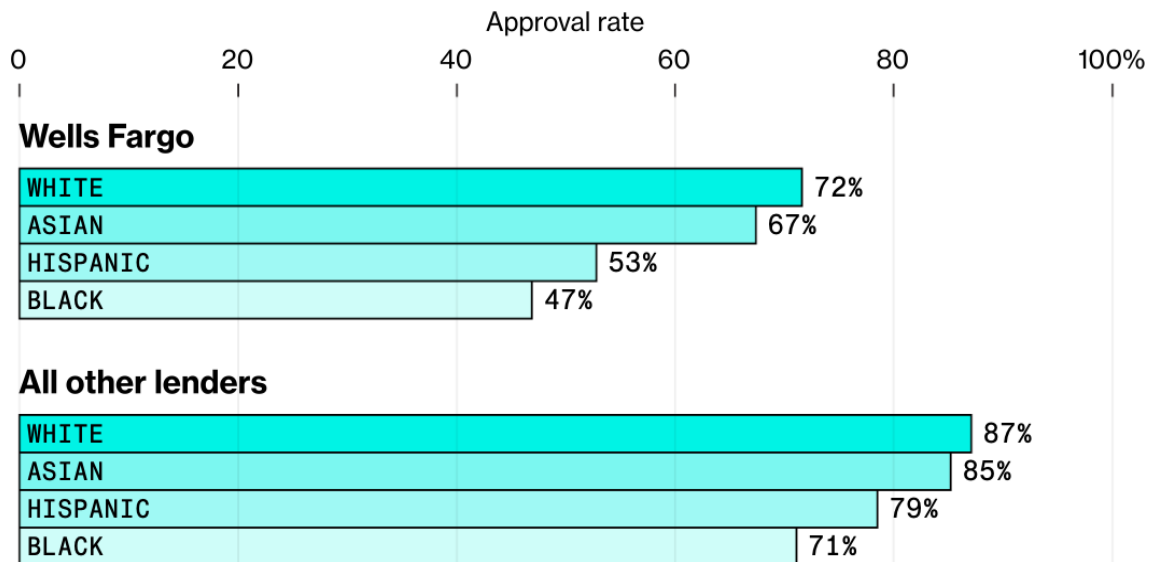
10 29. Either way, Plaintiff and members of the putative Class were harmed in the form
11 of higher monthly payments on their home mortgage loan payments which could have been
12 reduced but for Wells Fargo's discriminatory conduct.

13 30. Indeed, an investigation by Bloomberg News further unveiled Wells Fargo's
14 discriminatory practices with respect to the mortgage refinancing industry.¹⁶ Statistics collected
15 by Bloomberg show how wide Wells Fargo's disparity in refinance approvals was in 2020
16 compared to all other mortgage lenders in the United States:
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28 ¹⁶ Shawn Donnan, Ann Choi, Hannah Levitt, and Christopher Cannon, "Wells Fargo Left Black Homeowners Behind in Pandemic Mortgage Refinancing Boom, Bloomberg (Online) (March 11, 2022), at <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>.

Disparity by Lender

Wells Fargo approved fewer than half of Black homeowners' refinancing applications in 2020.



Source: Bloomberg analysis of Home Mortgage Disclosure Act data for 8 million completed applications to refinance conventional loans in 2020.

17

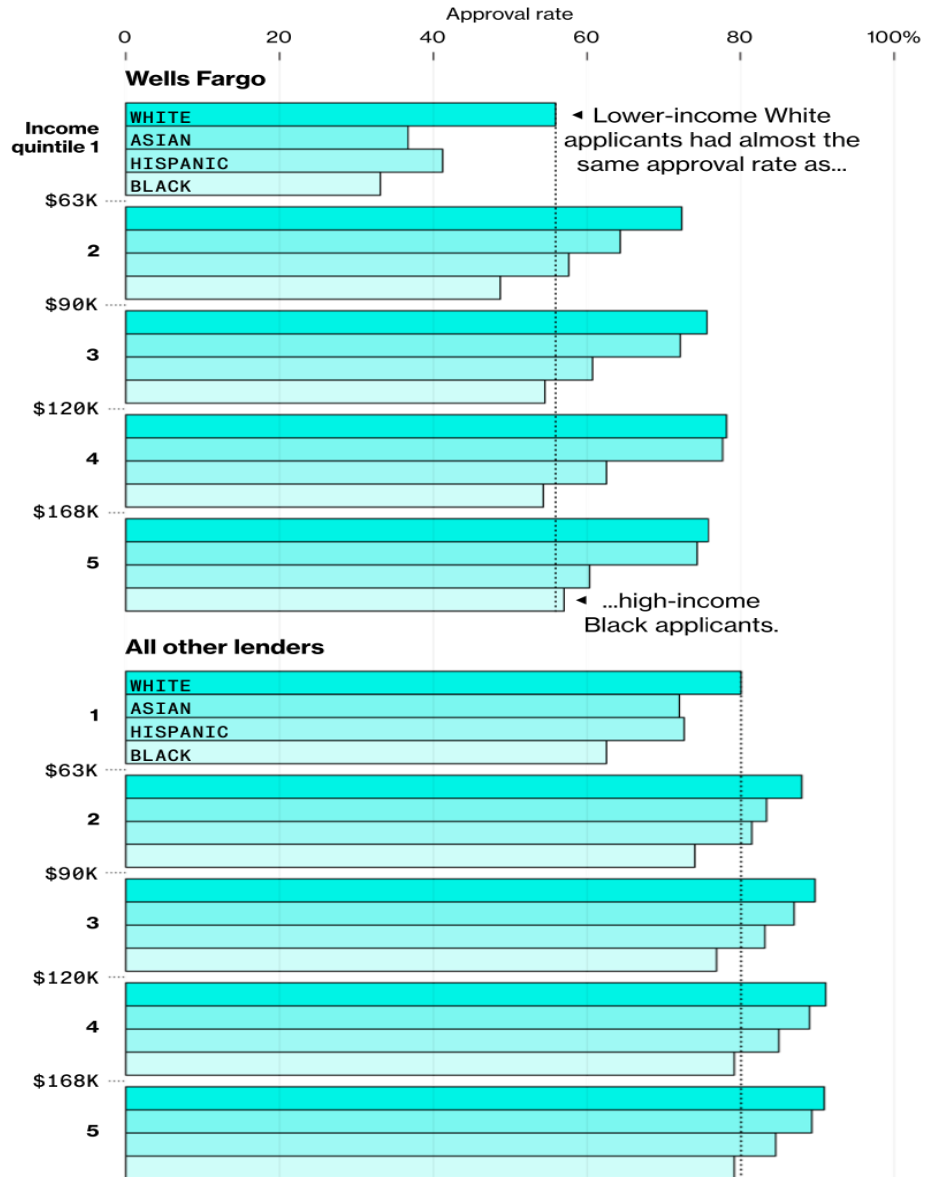
31. For example, during the time period at issue here, JP Morgan (the largest U.S. bank in terms of assets) approved 81% of mortgage refinance applications from Black homeowners, Rocket Mortgage LLC approved nearly 80% of Black applicants, and Bank of America approved 66% of Black applicants. This is in stark contrast to Wells Fargo's mere 47% approval rate of Black mortgage refinance applications.

32. Notably, Wells Fargo denied Black mortgage refinance applicants at significantly higher rates than White applicants that had significantly lower incomes:

¹⁷ *Id.*

Higher Income, Same Approval

Wells Fargo's refinancing approval rates were higher for the lowest-income White applicants in 2020 than for all but the highest-income Black applicants.



33. According to Kristy Fercho, the Wells Fargo employee responsible for overseeing Wells Fargo's home-lending line of business, lending decisions were "consistent across racial and ethnic groups" and that racial disparity in outcomes for refinancing in 2020 was the result of variables that Wells Fargo doesn't control.¹⁸ That provides no excuse because Wells Fargo is not permitted by law to discriminate in its mortgage application process.

¹⁸ *Id.*

V. CLASS ALLEGATIONS

34. Pursuant to F.R.C.P. Rule 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiff seeks certification of a class of all first and second lien Wells Fargo minority mortgage refinance applicants from 2019-present (the “Class Period”) whose refinancing applications were discriminatorily denied (the “Class”).

35. Excluded from the Class are Defendants, their subsidiaries, affiliates, officers, directors, and employees.

36. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Plaintiff is informed and believes — based upon the publicly-available information discussed herein — that there are tens of thousands of Class members, making joinder impracticable. Those individuals’ identities are available through Defendants’ records, and Class members may be notified of the pendency of this Action by recognized, Court-approved notice dissemination methods.

37. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3).** Defendants have acted in a manner generally applicable to Plaintiff and the other members of the proposed Class. There is a well-defined community of interest in the questions of law and fact involved, which affect all Class members. The questions of law and fact common to the Classes predominate over the questions that may affect individual Class members, including, *inter alia*:

- a. Whether Defendants systematically discriminated against Class members based upon their minority status;
 - b. Whether minority Class members’ applications to refinance a first or second lien loan were denied where similarly situated non-minority applicants were approved;
- and,

- c. Whether the algorithms used by Defendants unfairly discriminated against minority Class members and contained algorithmic bias.

38. **Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of other Class members' claims because Plaintiff and Class members were subjected to the same allegedly unlawful conduct and damaged in the same way.

39. **Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate class representative because his interests do not conflict with the interests of Class members whom he seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this Action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

40. **Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).** The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants. Such individual actions would create a risk of adjudications that would be dispositive of the interests of other Class members and impair their interests. Defendants have acted and/or refused to act on grounds generally applicable to the Classes, making final, public injunctive relief or corresponding declaratory relief appropriate.

41. Injunctive relief, and specifically public injunctive relief, is necessary in this Action.

42. The harm that Defendants impose on Plaintiff and Class members cause ripple effects for the public-at-large and Plaintiff seeks injunctive relief forcing Defendants to cease and desist its discriminatory practices.

43. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The

1 damages or other financial detriment suffered by Plaintiff and Class members are relatively small
2 compared to the burden and expense that would be required to individually litigate their claims
3 against Defendants, so it would be impracticable for Plaintiff and Class members to individually
4 seek redress for Defendants' wrongful conduct. Even if Plaintiff and Class members could afford
5 individual litigation, the court system could not. Individualized litigation creates a potential for
6 inconsistent or contradictory judgments and increases the delay and expense to all parties and the
7 court system. By contrast, the class action device presents far fewer management difficulties and
8 provides the benefits of single adjudication, economies of scale, and comprehensive supervision
9 by a single court.

10 **VI. CAUSES OF ACTION**

11 **COUNT I**

12 **VIOLATIONS OF THE FAIR HOUSING ACT**

13
14 44. Plaintiff, on behalf of himself and all others similarly situated, realleges each
15 previous paragraph as if fully alleged herein.

16 45. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business
17 includes engaging in residential real estate-related transactions from discriminating against any
18 person in making available such a transaction on the basis of race.

19 46. Defendants' business includes engaging in residential real estate-related
20 transactions.

21 47. As set forth above, Defendants maintain a nationwide set of uniform,
22 discriminatory refinancing practices and engage in a pattern or practice of systemic discrimination
23 against minority homeowners that constitute illegal, intentional discrimination and disparately
24 impacts Black Americans and minorities in violation of the Fair Housing Act of 1968.

25 48. Plaintiff and Class members were subjected to and harmed by Defendants' systemic
26 and individual discrimination.
27
28

49. On behalf of Plaintiff and the putative Class, Plaintiff seeks the relief set forth below.

COUNT II

VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT

47. Plaintiff, on behalf of himself and all others similarly situated, realleges each previous paragraph as if fully alleged herein.

48. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, makes it unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race.

49. As described above, Defendants are creditors because they regularly extend, renew, and continue credit, and Plaintiff were applicants for credit.

50. Defendants maintain a nationwide set of uniform, discriminatory mortgage loan origination and underwriting practices and engaged in a pattern or practice of systemic race discrimination against minority mortgage loan applicants that constitute illegal intentional race discrimination in violation of the Equal Credit Opportunity Act.

51. Plaintiff and Class members were subjected to and harmed by Defendants' systemic and individual discrimination.

52. Defendants' unlawful conduct resulted in considerable harm to Plaintiff and all Class members.

53. On behalf of himself and the Class he seeks to represent, Plaintiff requests the relief set forth below.

COUNT THREE

VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW

54. Plaintiff, on behalf of himself and all others similarly situated, realleges each previous paragraph as if fully alleged herein.

1 55. California's Unfair Competition Law ("UCL") defines unfair competition to
2 include any "unfair, unlawful, or fraudulent business practice and unfair, deceptive, untrue, or
3 misleading advertising and any act prohibited by Chapter 1 of Part 3 of Division 7 of [California's]
4 Business and Professions Code."

5 56. Defendants violated the UCL by engaging in unlawful and unfair business acts and
6 practices.

7 57. Defendants are considered "person[s]" as defined by the statute.

8 58. Pursuant to the statute, Plaintiff named herein, as well as the putative Class
9 members, have suffered injury-in-fact and have lost money or property because of the unfair
10 competition set forth herein.

11 59. In accordance with the liberal application and construction of the UCL, application
12 of the UCL to all Class members is appropriate given that Defendants are headquartered in this
13 District, have a forum selection clause specific to this District, and direct sales, marketing and
14 advertising in this District.

15 60. Unlawful Prong. A business act or practice is unlawful pursuant to the UCL if it
16 violates any other law or regulation.

17 61. Defendants' conduct violates the Fair Housing Act and the Equal Credit
18 Opportunity Act, and other applicable statutes which Plaintiff may add upon amending this
19 Complaint.
20

21 62. Unfairness Prong. A business act or practice is unfair pursuant to the UCL if it is
22 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

23 63. Defendants' unfair acts and practices include, but are not limited to: Plaintiff and
24 the Class are discriminated upon with respect to Defendants' discriminatory denial of Plaintiff's
25 and Class members' refinance applications during the Class Period; Defendants' denied Plaintiff's
26 and Class members' applications to refinance a first or second lien loan where similarly situated
27
28

1 non-minority applicants were approved, and the algorithms used by Defendants unfairly
2 discriminated against Plaintiff and minority Class members and contained algorithmic bias.

3 64. Defendants' conduct described herein caused Plaintiff and members of the putative
4 Class to suffer frustration, anxiety, emotional distress, and financial hardship.

5 65. Defendants' business practices are unfair because they offend public policy; they
6 are immoral, unethical, oppressive, outrageous, unscrupulous, and substantially injurious. The
7 injuries caused by this conduct and the harm to consumers outweigh the possible utility from these
8 aforementioned practices.

9 66. There is no benefit to consumers or competition by allowing Defendants to engage
10 in discriminatory denial of Plaintiff's and Class members' refinance applications.

11 67. The gravity of the harm suffered by Plaintiff and Class members resulting from
12 Defendants' conduct alleged herein outweighs any legitimate justification, motive or reason for
13 the discrimination described. Accordingly, Defendants' actions are immoral, unethical,
14 unscrupulous and offend the established public policies as set out in federal regulations and are
15 substantially injurious to Plaintiff and Class Members.

16 68. As a result of Defendants' above unlawful and unfair practices, Plaintiff and
17 members of the putative Class, and as appropriate on behalf of the general public, seek all
18 allowable damages under the UCL including injunctive relief ordering Defendants to transact in a
19 timely manner.
20
21

22 **VII. PRAYER FOR RELIEF**

23 69. WHEREFORE, Plaintiff respectfully requests that this Court find against the
24 Defendants as follows:
25

- 26 a. Certify this case as a class action;
- 27 b. Designate Plaintiff as Class Representatives and designate Plaintiff's counsel of
28 record as Class Counsel;

- 1 c. Declare that Defendants' acts, conduct, policies and practices are unlawful and
2 violate the Equal Credit Opportunity Act and the Fair Housing Act and were in
3 violation of California's UCL;
- 4 d. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination
5 against minorities;
- 6 e. Award Plaintiff and all others similarly situated compensatory and punitive
7 damages;
- 8 f. Award Plaintiff and all others similarly situated prejudgment interest and attorneys'
9 fees, costs and disbursements, as provided by law;
- 10 g. Award Plaintiff and all others similarly situated injunctive and legal relief as this
11 Court deems just and proper to end the discrimination and fairly compensate
12 Plaintiff and all others similarly situated.
- 13 h. Award Plaintiff and all others similarly situated such other relief as this Court
14 deems just and proper.
15

16 **VIII. JURY TRIAL DEMAND**

- 17 70. Jury trial demanded by Plaintiff and members of the putative Class.
18

19 DATED: March 25, 2022.
20

Respectfully submitted,

21 **MILBERG COLEMAN BRYSON**
22 **PHILLIPS GROSSMAN PLLC**

23 /s/ Alex R. Straus

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EXHIBIT F

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WINFRED THOMAS and MICHELLE
SIMS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., WELLS
FARGO & COMPANY,

Defendants.

Case No.: _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs allege upon personal knowledge as to themselves and their own actions, and upon
 2 information and belief, including the investigation of counsel, as follows:

3 I. NATURE OF THE ACTION

4 1. Spurred in part by the COVID-19 pandemic, low interest rates allowed American
 5 homeowners to refinance their home mortgages at more favorable interest rates from 2019 through
 6 present (the “Class Period”).

7 2. Plaintiffs, and members of the putative Class (the “Class”), seek damages for
 8 Defendants’ -- Wells Fargo Bank, N.A. and Wells Fargo & Company (collectively, “Wells Fargo”) --
 9 -- discriminatory practices in denying their applications to refinance their Wells Fargo mortgage
 10 loans in violation of the federal Fair Housing and Fair Lending acts, as well as state consumer
 11 protection laws. Indeed, according to recent investigations of Wells Fargo’s refinance activity
 12 during the Class Period that have been publicized in the media, Wells Fargo approved white
 13 applicants’ mortgage refinance requests at twice the rate of its approval of Black and
 14 Hispanic/Latino minority applicants’ refinance requests in numerous areas across the United
 15 States.¹ Plaintiffs’ own analysis of Wells Fargo’s mortgage refinance rates bears this out.
 16

17 3. This is no accident. For nearly two decades, Wells Fargo exploited the American
 18 dream of home ownership through discriminatory housing practices in violation of the FHA,
 19 including by making a disproportionately higher number of subprime and higher cost mortgage
 20 loans to minorities than to white borrowers, and then discriminatorily foreclosing on minority
 21 mortgage loans in higher minority concentration neighborhoods compared to white
 22 neighborhoods. Such reprehensible conduct has stripped many Wells Fargo minority customers
 23 of their single greatest asset – the equity value in their homes.
 24

25
 26
 27 ¹ Shawn Donnan, Ann Choi, Hannah Levitt, and Christopher Cannon, “Wells Fargo Left Black Homeowners Behind in Pandemic Mortgage
 28 Refinancing Boom, Bloomberg (Online) (March 11, 2022), at <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>. See also J.J. McCorvey and Julia Carpenter, “Millions of Americans Refinanced Last Year – but Fewer Black and Latino Homeowners Did,” WALL STREET JOURNAL (June 25, 2021), at <https://www.wsj.com/articles/millions-of-americans-refinanced-last-year-but-fewer-black-and-latino-homeowners-did-11624440601>.

4. To add further injury to the insult Wells Fargo's minority customers have already sustained, Wells Fargo is now discriminatorily refusing to refinance minority higher cost mortgages. Such reprehensible conduct begs the question why any minority would ever bank with this institution. Indeed, as Wells Fargo's CEO Charles Scharf has publicly acknowledged in Congressional testimony, Wells Fargo engaged in predatory and discriminatory mortgage lending and servicing practices, as well as fraudulent customer account practices.² And, as CEO Scharf further admitted in relatively recent media reports, Wells Fargo has an institutional, discriminatory bias.³

5. Plaintiffs and members of the putative Class have suffered harm due to the discriminatory tactics used by the Defendants with respect to their rejections of minority and female homeowners seeking the ability to refinance their mortgages. Due to this conduct, Plaintiffs and members of the putative Class bring this Action under federal and state law against the Defendants for damages, injunctive relief, attorney's fees, and any other relief this Court deems just and proper.

II. JURISDICTION AND VENUE

6. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332(d), and 1343, because the Plaintiff asserts federal causes of action, because Plaintiffs assert civil rights causes of action, and because at least one member of the Class is a citizen of a different state than all Defendants, and because the amount in controversy exceeds \$5,000,000.

² Wells Fargo CEO Charles Scharf admitted these failings in congressional testimony. See <https://financialservices.house.gov/uploadedfiles/chrgr-116hrg428866.pdf> at 9 (last visited Jan. 13, 2022) (testifying that he did not disagree with the Report's findings, and that "the series of behavior that is described should have never happened at the company. The failures that are described a direct result of us not managing the company properly"); *id.* at 5 ("[W]e had a flawed business model in how the company was managed").

³ See, e.g., <https://www.businesswire.com/news/home/20200923005604/en/> (last visited March 19, 2022) (discussing CEO Scharf's unconscious bias); see also <https://www.charlotteobserver.com/news/business/banking/article246012155.html> (Jimmie Paschall, Wells Fargo's head of enterprise diversity and inclusion, revealed: "There definitely is a sense that bias lives vibrantly at Wells Fargo. And I think it is around gender, gender identity, as well as race and ethnicity.")

7. Personal jurisdiction is appropriate over Defendants because Wells Fargo Bank, N.A. transacts business in the State of California and has its principal place of business in San Francisco, California. Wells Fargo Home Mortgage, Inc. originates loans to California customers from its California offices and maintains a systematic and continuous presence in the State.

8. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because Wells Fargo Bank, N.A. resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district, and Wells Fargo Bank, N.A.'s principal place of business is in this district.

INTRADISTRICT ASSIGNMENT

9. This action is properly assigned to the San Francisco Division of this District pursuant to N.D. Cal. L.R. 3-2, because Defendant Wells Fargo & Company is headquartered in San Francisco, California, which is served by the San Francisco Division.

III. PARTIES

10. Plaintiffs.

11. Plaintiff Winfred Thomas is a minority homeowner who owns equity in a home located in Hogansville, Georgia. In December of 2020, Plaintiff Thomas applied for a Wells Fargo home refinance and his application was denied in 2021. Shortly thereafter, Plaintiff Thomas applied to refinance his Wells Fargo mortgage with Veteran's United Home Loans. Plaintiff Thomas's refinance application was approved by Veteran's United Home Loans, receiving a mortgage interest rate of 3.2% less than the 5.5% existing mortgage rate Plaintiff Thomas was paying on his initial Wells Fargo mortgage.

12. Plaintiff Michells Sims is a minority homeowner who owns equity in a home located in Desoto, Texas. In December of 2021, Plaintiff Sims applied for a Wells Fargo home refinance and her application was denied in early 2022.

13. Defendants.

14. Defendant Wells Fargo Bank, N.A. is a nationally chartered bank with its principal place of business located in Sioux Falls, South Dakota and is chartered in Wilmington, Delaware.

15. Defendant Wells Fargo & Company is Defendant Wells Fargo Bank, N.A.’s parent company and is headquartered in San Francisco, California with its principal place of business located in Manhattan, New York, New York.

IV. FACTUAL ALLEGATIONS

A. Wells Fargo, the Home Mortgage Industry, and Home Mortgage Refinancing

16. Wells Fargo is one of the Country’s largest first and second lien mortgage lenders. Included within that line of business are its new mortgages derived from refinancing existing home mortgages.

17. Refinancing an existing mortgage allows a borrower to try to obtain better terms including, for example, a lower interest rate. A lower mortgage interest rate enables a borrower to save hundreds, if not thousands, of dollars per year on interest charges. As Wells Fargo explains on “Why Refinance a Mortgage” page on its website, refinancing a mortgage enables a borrower: (1) to tap into home equity (using the equity established in the home in order to get a cash-out refinance where the bank gives the borrower cash in exchange for that equity in order to pay other loans or credit card debt), (2) take advantage of lower [interest] rates (which reduce the monthly payments and the total interest paid out over the duration of the loan), (3) change your loan term (to shorten or lengthen the loan term length), and (4) to convert to an adjustable rate mortgage or a fixed-rate mortgage.⁴

18. Conversely, the denial of refinance applications means that a mortgage borrower must continue to pay higher mortgage costs. Brookings Institute senior fellow Andre Perry states that the inability of Black homeowners to refinance their home mortgage loans “means people

⁴ <https://www.wellsfargo.com/mortgage/mortgage-refinance/why-refinance/>, (last accessed Mar. 7, 2022).

1 have less resources to invest in their children, less resources to start businesses, less resources to
 2 renovate their homes, less resources to buy additional homes.”⁵ This, in the aggregate, widens the
 3 racial wealth gap in the United States.

4 **B. The Pandemic-induced Interest Rates Made Mortgage Refinancing Attractive to**
 5 **Homeowners**

6 19. During the Class Period, interest rates dropped substantially due to economic
 7 pressures caused by the COVID-19 pandemic – this made refinancing more attractive for mortgage
 8 holders.
 9

10 20. A study by the Federal Reserve Bank of Boston concluded the following:

- 11 a. The typical refinance during the Class Period reduced borrowers’ monthly
 12 payments by \$279 per month, leading to a total payment reduction of \$5.3 billion
 13 per year in the United States for all households that refinanced.⁶
 14
 15 b. However, only \$198 million, or 3.7% of the total payment reduction of \$5.3 billion,
 16 went to Black households.⁷
 17
 18 c. This is especially problematic considering that Black households account for over
 19 13% of the entire United States population and over 9% of all homeowners.⁸
 20
 21 d. Additionally, the study concluded that white homeowners were approved at twice
 22 the rate of Black homeowners with respect to mortgage refinancing during the Class
 23 Period.⁹

24 21. The study found that, “[c]ompared with white borrowers, Black borrowers on
 25 average have lower credit scores and higher loan-to-value ratios [which are] risk factors that can

26 ⁵ *Id.*

27 ⁶ Larry Bean, “Fed study: Minority borrowers bore the brunt of COVID-19’s impact on the mortgage market,” FEDERAL RESERVE BANK OF
 28 BOSTON (June 22, 2021), at <https://www.bostonfed.org/news-and-events/news/2021/06/minority-borrowers-bear-brunt-of-covid-19-impact-on-mortgage-market.aspx>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

1 prevent someone from refinancing and reducing their monthly mortgage payments. However,
 2 when authors [of the study] control for these factors, they find that before the pandemic, Black and
 3 white borrowers were roughly equally likely to refinance. After the pandemic began and interest
 4 rates plummeted, Black homeowners were 40% less likely than white homeowners to finance,
 5 holding equal the risk factors for both groups.”¹⁰

6 22. Critically, the authors of the study concluded, “borrowers who could use the
 7 payment reductions the most moving forward may be the least likely to obtain them.”¹¹
 8

9 **C. Due to the Discriminatory Conduct of the Defendants, Plaintiffs and the Members**
 10 **of the Putative Class Were Denied Refinancing Opportunities by Defendants’**
 11 **Bank, Wells Fargo**

12 23. Wells Fargo has engaged in discriminatory practices that disparately reduce the
 13 number of home mortgage refinance requests by minority applicants. With respect to minority
 14 applicants, these tactics, taken generally, are called “redlining.”
 15

16 24. The term “redlining” has its roots in New Deal-era racism, which limited minority
 17 access to housing opportunities. Historically, the concept of redlining comes “from government
 18 maps that outlined areas where Black residents lived and therefore were deemed more risky [real
 19 estate] investments.”¹²

20 25. In the past, redlining took place through the use of mapping where Black
 21 neighborhoods were and consisted of coloring those neighborhoods “red” as to denote that they
 22 were high risk investments because of the populations that inhabited them. In the modern day,
 23 redlining takes place usually though an algorithmic bias which considers multiple factors tied to
 24 race (such as ZIP code, education, area code, census track, average home values, and other
 25

26
 27 ¹⁰ *Id.*

28 ¹¹ *Id.*

¹² Candace Jackson, “What is Redlining?,” NYTIMES (ONLINE) (Aug. 17, 2021), at <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>.

factors) and uses them in the decision of whether to approve a home mortgage refinancing application.

26. For example, the refinancing calculator on Wells Fargo’s website, utilizes a digitized algorithmic tool that assesses creditworthiness and other factors to offer estimated refinance rates. The tool asks for inputs for factors that are proxies for minority homeowner status, such as geography (Wells Fargo notes: “[Refinancing] [r]ates can vary by location”)¹³ and credit score (to which Wells Fargo gives four options: Excellent, Good, Fair, or Poor/Limited).¹⁴

27. On its refinance applications, hosted by Blend Labs, Inc., the digitized algorithmic tool (which assesses creditworthiness and other factors to lock in a home mortgage refinance interest rate) also asks for information that can be proxies for race, including “demographic information,” employment and income information, real estate holdings by the applicant, and other information.¹⁵

28. Wells Fargo’s use of these factors has resulted in discrimination by disparately denying minority and female applicants’ refinance applications at rates far in excess of denial rates experienced by white borrowers.

D. Due to the Discriminatory Conduct of the Defendants, Plaintiffs and the Members of the Putative Class Were Harmed

29. Plaintiffs and members of the putative Class were harmed because they were either denied the ability to refinance their home mortgages entirely due to Wells Fargo’s conduct described herein, or they were given less favorable terms than white borrowers who similarly refinanced their home mortgages through Wells Fargo.

¹³ <https://www.wellsfargo.com/mortgage/mortgage-refinance/why-refinance/>, (last accessed Mar. 7, 2022).

¹⁴ *Id.*

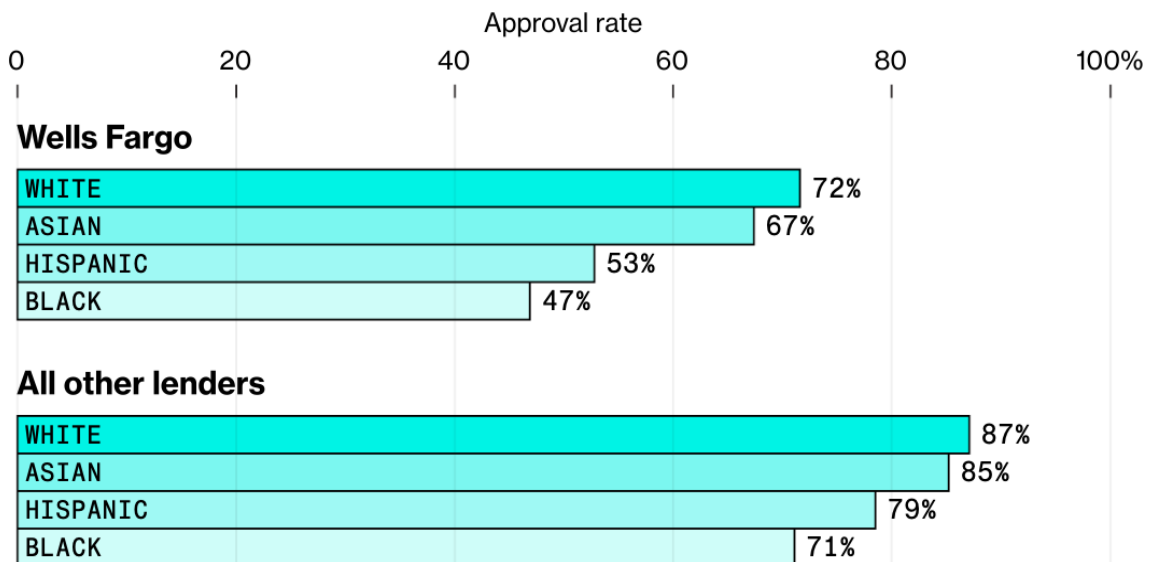
¹⁵ <https://yourmortgageapp.wf.com/section/Getting%20Started/task/BORROWER/3652fd6a-b3e4-4308-bfa8-a92e9f4bbb83>, (last accessed Mar. 7, 2022).

30. Either way, Plaintiffs and members of the putative Class were harmed in the form of higher monthly payments on their home mortgage loan payments which could have been reduced but for Wells Fargo's discriminatory conduct.

31. Indeed, an investigation by Bloomberg News further unveiled Wells Fargo's discriminatory practices with respect to the mortgage refinancing industry.¹⁶ Statistics collected by Bloomberg show how wide Wells Fargo's disparity in refinance approvals was in 2020 compared to all other mortgage lenders in the United States:

Disparity by Lender

Wells Fargo approved fewer than half of Black homeowners' refinancing applications in 2020.



Source: Bloomberg analysis of Home Mortgage Disclosure Act data for 8 million completed applications to refinance conventional loans in 2020.

¹⁶ Shawn Donnan, Ann Choi, Hannah Levitt, and Christopher Cannon, "Wells Fargo Left Black Homeowners Behind in Pandemic Mortgage Refinancing Boom," Bloomberg (Online) (March 11, 2022), at <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>.

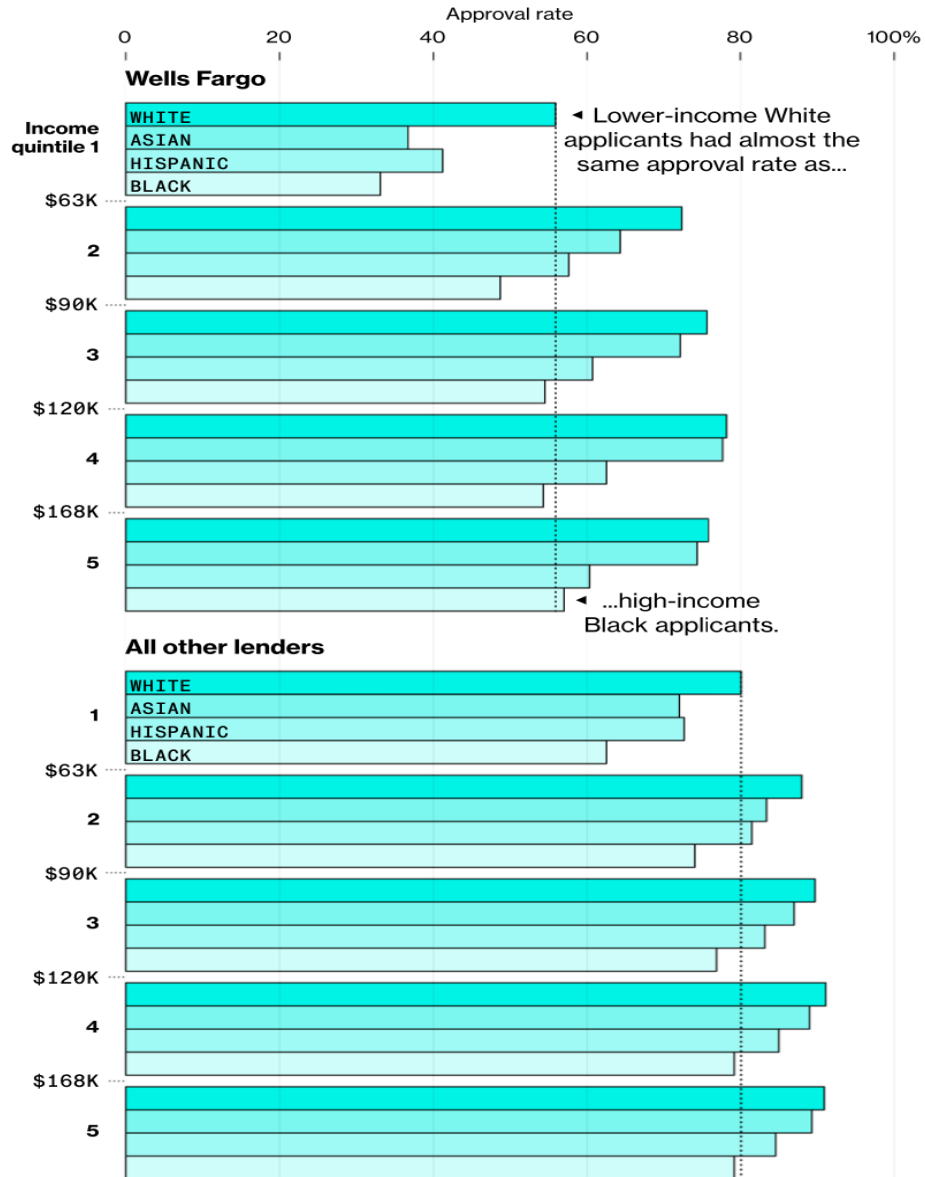
¹⁷ *Id.*

1 32. For example, during the time period at issue here, JP Morgan (the largest U.S. bank
2 in terms of assets) approved 81% of mortgage refinance applications from Black homeowners,
3 Rocket Mortgage LLC approved nearly 80% of Black applicants, and Bank of America approved
4 66% of Black applicants. This is in stark contrast to Wells Fargo's mere 47% approval rate of
5 Black mortgage refinance applications.

6 33. Notably, Wells Fargo denied Black mortgage refinance applicants at significantly
7 higher rates than White applicants that had significantly lower incomes:
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Higher Income, Same Approval

Wells Fargo's refinancing approval rates were higher for the lowest-income White applicants in 2020 than for all but the highest-income Black applicants.



34. According to Kristy Fercho, the Wells Fargo employee responsible for overseeing Wells Fargo's home-lending line of business, lending decisions were "consistent across racial and ethnic groups" and that racial disparity in outcomes for refinancing in 2020 was the result of

1 variables that Wells Fargo doesn't control.¹⁸ That provides no excuse because Wells Fargo is not
2 permitted by law to discriminate in its mortgage application process.

3 V. CLASS ALLEGATIONS

4 35. Pursuant to F.R.C.P. Rule 23(b)(2) and (b)(3), as applicable, and (c)(4),
5 Plaintiffs seek certification of a class of all first and second lien Wells Fargo minority
6 mortgage refinance applicants from 2019-present (the "Class Period") whose refinancing
7 applications were discriminatorily denied (the "Class".)

8 36. Excluded from the Class are Defendants, their subsidiaries, affiliates, officers,
9 directors, and employees.

10 37. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of the
11 Class are so numerous and geographically dispersed that individual joinder of all Class members
12 is impracticable. Plaintiffs are informed and believe — based upon the publicly-available
13 information discussed herein — that there are tens of thousands of Class members, making joinder
14 impracticable. Those individuals' identities are available through Defendants' records, and Class
15 members may be notified of the pendency of this Action by recognized, Court-approved notice
16 dissemination methods.

17 38. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2)**
18 **and 23(b)(3).** Defendants have acted in a manner generally applicable to Plaintiffs and the other
19 members of the proposed Class. There is a well-defined community of interest in the questions of
20 law and fact involved, which affect all Class members. The questions of law and fact common to
21 the Classes predominate over the questions that may affect individual Class members, including,
22 *inter alia*:
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¹⁸ *Id.*

- a. Whether Defendants systematically discriminated against Class members based upon their minority status;
- b. Whether minority Class members' applications to refinance a first or second lien loan were denied where similarly situated non-minority applicants were approved; and,
- c. Whether the algorithms used by Defendants unfairly discriminated against minority Class members and contained algorithmic bias.

39. **Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of other Class members' claims because Plaintiffs and Class members were subjected to the same allegedly unlawful conduct and damaged in the same way.

40. **Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate class representatives because their interests do not conflict with the interests of Class members whom they seeks to represent, Plaintiffs have retained counsel competent and experienced in complex class action litigation, and Plaintiffs intend to prosecute this Action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

41. **Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).** The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants. Such individual actions would create a risk of adjudications that would be dispositive of the interests of other Class members and impair their interests. Defendants have acted and/or refused to act on grounds generally applicable to the Classes, making final, public injunctive relief or corresponding declaratory relief appropriate.

42. Injunctive relief, and specifically public injunctive relief, is necessary in this Action.

43. The harm that Defendants impose on Plaintiffs and Class members cause ripple effects for the public-at-large and Plaintiffs seek injunctive relief forcing Defendants to cease and desist its discriminatory practices.

44. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Plaintiffs and Class members to individually seek redress for Defendants' wrongful conduct. Even if Plaintiff and Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

VI. CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR HOUSING ACT

45. Plaintiffs, on behalf of themselves and all others similarly situated, reallege each previous paragraph as if fully alleged herein.

46. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business includes engaging in residential real estate-related transactions from discriminating against any person in making available such a transaction on the basis of race.

47. Defendants' business includes engaging in residential real estate-related transactions.

48. As set forth above, Defendants maintain a nationwide set of uniform, discriminatory refinancing practices and engage in a pattern or practice of systemic discrimination against minority homeowners that constitute illegal, intentional discrimination and disparately impacts Black Americans and minorities in violation of the Fair Housing Act of 1968.

49. Plaintiffs and Class members were subjected to and harmed by Defendants' systemic and individual discrimination.

50. On behalf of Plaintiffs and the putative Class, Plaintiffs seek the relief set forth below.

COUNT II

VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT

47. Plaintiffs, on behalf of themselves and all others similarly situated, reallege each previous paragraph as if fully alleged herein.

48. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, makes it unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race.

49. As described above, Defendants are creditors because they regularly extend, renew, and continue credit, and Plaintiffs were applicants for credit.

50. Defendants maintain a nationwide set of uniform, discriminatory mortgage loan origination and underwriting practices and engaged in a pattern or practice of systemic race discrimination against minority mortgage loan applicants that constitute illegal intentional race discrimination in violation of the Equal Credit Opportunity Act.

51. Plaintiffs and Class members were subjected to and harmed by Defendants' systemic and individual discrimination.

52. Defendants' unlawful conduct resulted in considerable harm to Plaintiffs and all Class members.

1 53. On behalf of themselves and the Class they seeks to present, Plaintiffs request the
2 relief set forth below.

3
4 **COUNT THREE**

5 **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW**

6 54. Plaintiffs, on behalf of themselves and all others similarly situated, reallege each
7 previous paragraph as if fully alleged herein.

8 55. California’s Unfair Competition Law (“UCL”) defines unfair competition to
9 include any “unfair, unlawful, or fraudulent business practice and unfair, deceptive, untrue, or
10 misleading advertising and any act prohibited by Chapter 1 of Part 3 of Division 7 of [California’s]
11 Business and Professions Code.”

12 56. Defendants violated the UCL by engaging in unlawful and unfair business acts and
13 practices.

14 57. Defendants are considered “person[s]” as defined by the statute.

15 58. Pursuant to the statute, Plaintiffs named herein, as well as the putative Class
16 members, have suffered injury-in-fact and have lost money or property because of the unfair
17 competition set forth herein.
18

19 59. In accordance with the liberal application and construction of the UCL, application
20 of the UCL to all Class members is appropriate given that Defendants are headquartered in this
21 District, have a forum selection clause specific to this District, and direct sales, marketing and
22 advertising in this District.
23

24 60. Unlawful Prong. A business act or practice is unlawful pursuant to the UCL if it
25 violates any other law or regulation.
26
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61. Defendants' conduct violates the Fair Housing Act and the Equal Credit Opportunity Act, and other applicable statutes which Plaintiffs may add upon amending this Complaint.

62. Unfairness Prong. A business act or practice is unfair pursuant to the UCL if it is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

63. Defendants' unfair acts and practices include, but are not limited to: Plaintiffs and the Class are discriminated upon with respect to Defendants' discriminatory denial of Plaintiffs' and Class members' refinance applications during the Class Period; Defendants' denied Plaintiffs' and Class members' applications to refinance a first or second lien loan where similarly situated non-minority applicants were approved, and the algorithms used by Defendants unfairly discriminated against minority Class members and contained algorithmic bias.

64. Defendants' conduct described herein caused Plaintiff and members of the putative Class to suffer frustration, anxiety, emotional distress, and financial hardship.

65. Defendants' business practices are unfair because they offend public policy; they are immoral, unethical, oppressive, outrageous, unscrupulous, and substantially injurious. The injuries caused by this conduct and the harm to consumers outweigh the possible utility from these aforementioned practices.

66. There is no benefit to consumers or competition by allowing Defendants to engage in discriminatory denial of Plaintiffs' and Class members' refinance applications.

67. The gravity of the harm suffered by Plaintiffs and Class members resulting from Defendants' conduct alleged herein outweighs any legitimate justification, motive or reason for the discrimination described. Accordingly, Defendants' actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and are substantially injurious to Plaintiff and Class Members.

68. As a result of Defendants' above unlawful and unfair practices, Plaintiffs and members of the putative Class, and as appropriate on behalf of the general public, seek all allowable damages under the UCL including injunctive relief ordering Defendants to transact in a timely manner.

VII. PRAYER FOR RELIEF

69. WHEREFORE, Plaintiffs respectfully request that this Court find against the Defendants as follows:

- a. Certify this case as a class action;
- b. Designate Plaintiffs as Class Representatives and designate Plaintiffs' counsel of record as Class Counsel;
- c. Declare that Defendants' acts, conduct, policies and practices are unlawful and violate the Equal Credit Opportunity Act and the Fair Housing Act and were in violation of California's UCL;
- d. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination against minorities;
- e. Award Plaintiffs and all others similarly situated compensatory and punitive damages;
- f. Award Plaintiffs and all others similarly situated prejudgment interest and attorneys' fees, costs and disbursements, as provided by law;
- g. Award Plaintiffs and all others similarly situated injunctive and legal relief as this Court deems just and proper to end the discrimination and fairly compensate Plaintiffs and all others similarly situated.
- h. Award Plaintiffs and all others similarly situated such other relief as this Court deems just and proper.

VIII. JURY TRIAL DEMAND

70. Jury trial demanded by Plaintiffs and members of the putative Class.

DATED: March 25, 2022.

Respectfully submitted,

**MILBERG COLEMAN BRYSON
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EXHIBIT G

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IFEOMA EBO,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.

Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT, 15 U.S.C. §§ 1691, *ET SEQ.*;**
- 2. VIOLATIONS OF THE FAIR HOUSING ACT, 42 U.S.C. §§ 3601, *ET SEQ.*; and**
- 3. VIOLATIONS OF SECTION 1981, 42 U.S.C. § 1981.**

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff IFEOMA EBO (“Plaintiff”), individually and on behalf of all others similarly situated, by and through counsel, and for her Class Action Complaint against Defendant WELLS FARGO BANK, N.A. (“Wells Fargo” or “Defendant”), states as follows:

INTRODUCTION

1. This case concerns Wells Fargo’s pervasive pattern and practice of placing Black Americans at a disadvantage in comparison to White Americans with respect to their applications for mortgage loans.

2. In fact, Wells Fargo’s discriminatory practices were already the subject of a lawsuit brought by the United States Department of Justice (“DOJ”) in 2012, which was resolved through a Consent Order (the “Consent Order”).¹ Pursuant to the terms of that Consent Order, Wells Fargo was required to “provide[] \$184.3 million in compensation” to borrowers—which was “the second largest fair lending settlement in the [DOJ]’s history” to that point—and was required to institute procedures to ensure compliance with federal housing law.²

3. Unfortunately for Black Americans, as soon as the terms of that Consent Order expired, Wells Fargo reverted back to its discriminatory practices.

4. For example, according to a recent report from Bloomberg, “Wells Fargo approved fewer than half of Black homeowners’ refinancing applications in 2020,” which is a significantly lower rate than all other lenders.³ In fact, “Wells Fargo...was alone in rejecting more Black homeowners than it accepted.”⁴

5. Moreover, based on a review of publicly available data from the Consumer Financial Protection Bureau (“CFPB”)—collected under the Home Mortgage Disclosure Act (“HMDA”), which is codified as 12 U.S.C. §§ 2801, *et seq.*—Wells Fargo still lags behind its industry counterparts with respect to approving Black Americans’ loan applications, and, even when Wells Fargo does approve Black Americans’ loan applications, Wells Fargo offers them significantly less favorable interest rates.

¹ See, e.g., DOJ Complaint, available at: <https://www.justice.gov/iso/opa/resources/9512012712113719995136.pdf>; Consent Order, available at: <https://www.justice.gov/iso/opa/resources/14201271211384881962.pdf>.

² See, <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief>.

³ See, <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>.

⁴ *Id.*

1 6. As explained below, Wells Fargo’s discriminatory practices violate, *inter alia*, the Equal
2 Credit Opportunity Act (“ECOA”)—codified as 15 U.S.C. §§ 1691, *et seq.*—the Fair Housing Act
3 (“FHA”)—codified as 42 U.S.C. §§ 3601, *et seq.*—and 42 U.S.C. § 1981 (“Section 1981”). Accordingly,
4 Plaintiff, individually, and on behalf of all others similarly situated (the “Class”), seeks redress in
5 connection with the harm she and other Class members incurred as a result of Wells Fargo’s
6 discriminatory practices and violations of federal law.
7

8 **PARTIES, JURISDICTION, AND VENUE**

9 7. Plaintiff is a citizen of the United States and an adult resident of the City of New York,
10 New York.

11 8. Defendant Wells Fargo Bank, N.A. is a business incorporated under the laws of the State
12 of Delaware. Defendant maintains its principal place of business at 420 Montgomery Street, San
13 Francisco, California 94104. Defendant does business in the state of New York and nationwide.

14 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as
15 several of Plaintiff’s causes of action arise under federal law.
16

17 10. Personal jurisdiction is appropriate over Wells Fargo Bank, N.A. as it transacts business in
18 the State of California and has its principal place of business in San Francisco, California.

19 11. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the
20 events or omissions giving rise to the claims asserted herein occurred in this District.
21

22 **INTRADISTRICT ASSIGNMENT**

23 12. This action is properly assigned to the San Francisco Division of this District pursuant to
24 N.D. Cal. L.R. 3-2, because Defendant Wells Fargo Bank, N.A. is headquartered in San Francisco,
25 California, which is served by the San Francisco Division.
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FACTUAL ALLEGATIONS

13. Plaintiff and Class members are all Black Americans, and thus are members of a protected class.

14. Plaintiff and Class members each submitted an application for a mortgage loan from Defendant in connection with the purchase or refinancing of residential real estate (“Application”).

15. Plaintiff and Class members were qualified to receive mortgage loans from Wells Fargo, and complied with all reasonable requirements imposed by Wells Fargo as necessary to substantiate their qualifications to receive mortgage loans.

16. Nevertheless, Plaintiff’s and Class members’ Applications were either (1) denied by Wells Fargo, (2) never completed because of Wells Fargo’s unreasonable demands that would not have been imposed by Wells Fargo in connection with a similarly situated White applicant, or (3) granted by Wells Fargo, but on significantly less favorable terms than a similarly situated White borrower would have received.

17. Plaintiff’s and Class members’ experiences with Wells Fargo were part of a larger pattern and practice of racial discrimination against Black Americans.

18. As noted above, Wells Fargo was already subjected to a DOJ lawsuit in 2012 alleging similar misconduct. That lawsuit was ultimately resolved through a Consent Order which provided for “the second largest fair lending settlement in the [DOJ]’s history” to that point.⁵ Nevertheless, Wells Fargo’s discriminatory practices continued.

19. For example, according to Bloomberg, in 2020, Wells Fargo approved Black Americans’ loan refinancing applications at a rate of 47%, in comparison to a rate of 72% for White Americans—a

⁵ See, <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief>.

25% difference.⁶ Other similarly-sized lenders had only a modest disparity between Black and White applicants, ranging from 7% to 12%.⁷ For instance, Chase, “the largest U.S. bank by assets, accepted 81% of refinancing applications from Black homeowners in 2020 compared with 90% from White ones”—which only amounts to a 9% difference.⁸

20. Notably, Wells Fargo’s 47% approval rate does not even account for the “27% of Black borrowers who began an application with Wells Fargo in 2020 [and then] withdrew it.”⁹ When those applicants are factored in, it means that “only one-third of the 17,702 Black homeowners who sought refinancing [from Wells Fargo] were successful.”¹⁰

21. The Bloomberg report also notes that “Wells Fargo approved a greater share of applications from low-income White homeowners than all but the highest-income Black applicants, who had an approval rate about the same as White borrowers in the lowest-income bracket.”¹¹ Clearly, the disparity between Black and White applicants seeking refinancing from Wells Fargo has little to do with creditworthiness.

22. Wells Fargo’s discriminatory practices are also pervasive with respect to applicants for new mortgage loans.

23. Based on a review of publicly available data collected by the CFPB in accordance with the HMDA, in 2019, Wells Fargo approved Black Americans’ loan applications at a rate that was approximately 21% lower than White Americans’ loan applications. In comparison, three of the other

⁶ See, <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

largest lenders in the country—*i.e.*, Chase, Quicken Loans, and United Wholesale Mortgage—approved Black Americans’ loan applications at a rate that was “only” approximately 10% lower than White Americans’ loan applications.

24. Moreover, even when common indicia of creditworthiness are controlled for—*e.g.*, debt to income ratio, loan to value ratio, etc.—Wells Fargo approved Black Americans’ loan applications at a rate that was, on average, approximately 9% lower than similarly situated White Americans’ loan applications. In contrast, Chase—one of the largest mortgage loan lenders in the country—approved Black Americans’ loan applications at a rate that was, on average, approximately 3% *higher* than similarly situated White Americans’ loan applications. Chase is not an outlier. When that same analysis is applied to data from three of the other largest lenders in the county—*i.e.*, Chase, Quicken Loans, and United Wholesale Mortgage—it reveals that Black Americans’ loan applications were approved at a rate that was, on average, approximately 2% *higher* than similarly situated White Americans’ loan applications.

25. Even when Wells Fargo does approve Black Americans’ loan applications, it offers them significantly less favorable terms than similarly situated White Americans.

26. According to the same dataset referenced above, the interest rates on loans offered by Wells Fargo to Black Americans were, on average, half a percentage point *higher* than the interest rates on the loans it offered to similarly situated White Americans, even when common indicia of creditworthiness are controlled for.

27. In comparison, there was no appreciable difference between the interest rates offered to Black Americans and similarly situated White Americans by three of the other largest lenders in the county—*i.e.*, Chase, Quicken Loans, and United Wholesale Mortgage. For these lenders, the difference between the interest rates offered to Black Americans and similarly situated White Americans was, on average, only five hundredths of a percentage point—*i.e.*, *ten times less* than Wells Fargo’s disparity.

1 **28.** Wells Fargo’s discriminatory practices are also evidenced by the fact that Wells Fargo
2 artificially makes it more difficult for Black Americans to complete their applications for mortgage loans.
3 For example, Wells Fargo has a pattern and practice of requiring Black Americans to repeatedly submit
4 documentation that they have already submitted, or to submit additional documentation beyond what is
5 necessary to determine their eligibility status.

6 **29.** Again, according to publicly available data collected by the CFPB in accordance with the
7 HMDA, in 2019, new mortgage loan applications submitted by Black Americans to Wells Fargo were
8 either withdrawn or never completed approximately 17% of the time, in comparison to only 14% for
9 White Americans. But, there was no difference between Black Americans and White Americans with
10 respect to applications submitted to three of the other largest lenders in the county—*i.e.*, Chase, Quicken
11 Loans, and United Wholesale Mortgage. For these lenders, *both* Black Americans and White Americans
12 either withdrew or never completed their mortgage loan applications 8% of the time.

13 **30.** The processing delays experienced by Black Americans who seek mortgage loans from
14 Wells Fargo can prevent them from purchasing real property altogether because, in real estate transactions,
15 time is frequently of the essence. In other words, sellers of real property are simply unwilling to wait for
16 Wells Fargo’s unnecessarily lengthy loan approval process to be completed, and sellers move on to other
17 potential buyers with whom they will not experience this problem.

18 **31.** Those processing delays also made it more difficult for existing Black property owners to
19 refinance their mortgage loans and take advantage of historically lower interest rates, which have since
20 begun to rise.

21 **32.** In light of the foregoing, Plaintiff and Class members were harmed by Wells Fargo’s
22 discriminatory practices in one or more of the following ways: (1) they were unable to obtain or refinance
23 mortgage loans to which they were qualified; (2) they were unable to obtain or refinance mortgage loans
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1 on the same (more favorable) terms as White Americans; (3) they were unable to purchase real property
2 that similarly situated White Americans would have been able to purchase; and (4) they spent time and
3 money pursuing mortgage loans that similarly situated White Americans would not have been required to
4 expend.

5 **FACTS RELEVANT TO PLAINTIFF**

6
7 **33.** Plaintiff is a Black American, and thus is a member of a protected class.

8 **34.** In late 2021, Plaintiff began the process of searching for a new home to purchase. That
9 search ended in October 2021, when Plaintiff found a property (the “Property”) located in Kings County,
10 New York—and more specifically, the East Flatbush neighborhood of Brooklyn—and entered into a
11 contract (the “Contract”) to purchase it for the price of \$900,000.

12 **35.** Thereafter, Plaintiff submitted an application for a mortgage loan to Defendant in
13 connection with the purchase of the Property (“Plaintiff’s Application”).

14 **36.** At the time Plaintiff applied for the Loan (defined below), Plaintiff had a credit score of
15 approximately 800, an annual income of approximately \$178,000, and no significant debt.

16 **37.** On November 1, 2021, Plaintiff received preapproval from Wells Fargo for a mortgage
17 loan in the amount of \$883,698 (the “Loan”), which would be used to purchase the Property. According
18 to Wells Fargo, Plaintiff’s preapproval was to expire on February 24, 2022.

19 **38.** After Plaintiff’s Application was preapproved, Plaintiff began working with Wells Fargo
20 to receive final approval for the Loan.

21 **39.** Per Wells Fargo’s requests, Plaintiff submitted all necessary documentation to verify her
22 qualifications for the Loan. Plaintiff timely provided Wells Fargo with documentation such as W-2 forms,
23 paystubs, bank account statements, etc.
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1 **40.** On December 29, 2021, Plaintiff received a “Commitment Letter” from Wells Fargo.
2 According to the Commitment Letter, Plaintiff’s Application was approved, and she only needed to submit
3 some additional documentation “in order to complete the final underwriting and funding of” her Loan.

4 **41.** In January and February 2022, Wells Fargo informed Plaintiff that it required additional
5 documentation to complete the underwriting process relative to Plaintiff’s Application.

6 **42.** Notably, some of the additional documentation that Wells Fargo requested in January and
7 February 2022 had *already* been submitted by Plaintiff (*e.g.*, recent paystubs from Plaintiff’s employers).
8

9 **43.** Other documentation requested by Wells Fargo in January and February 2022 was
10 unnecessary, unduly burdensome, and irrelevant to Plaintiff’s qualifications for the Loan. For example,
11 in one instance, Wells Fargo requested a written explanation as to why Plaintiff made a monthly credit
12 card payment in the amount of \$290 on her own credit card. In another instance, Wells Fargo requested
13 a bank statement for a bank account that did not even exist.

14 **44.** As Wells Fargo’s duplicative and unnecessary requests for documentation continued into
15 February 2022, Plaintiff expressed her concern to Wells Fargo that she would not be able to complete the
16 Loan application process by the time that her preapproval expired on February 24, 2022. Nevertheless, as
17 of February 24, 2022, Plaintiff’s Loan still had yet to receive final approval.
18

19 **45.** In March 2022, Wells Fargo continued to request additional documentation, much of which
20 was duplicative of documentation that Plaintiff had already provided to Wells Fargo several times
21 previously.
22

23 **46.** In sum, Plaintiff was highly qualified to receive a mortgage loan from Wells Fargo, and
24 complied with all of Wells Fargo’s reasonable requests for documentation to substantiate her
25 qualifications. Yet, as of March 22, 2022—nearly a month after the Loan approval process should have
26 concluded—Plaintiff still had not received final approval for her Loan.
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48. As explained above, Plaintiff's experience with Wells Fargo was part of a larger pattern and practice of racial discrimination against Black Americans. Like the Applications of many other Black Americans who sought mortgage loans from Wells Fargo, Plaintiff's Application was never completed because of Wells Fargo's unreasonable demands that would not have been imposed by Wells Fargo in connection with a similarly situated White applicant.

11 **49.** Plaintiff was harmed by Wells Fargo’s discriminatory practices because she was unable to
12 obtain the Loan—to which she was qualified—and was thus unable to purchase the Property, even though
13 a similarly situated White American would have been able to do so. Plaintiff was also harmed by Wells
14 Fargo’s discriminatory practices because she spent time and money pursuing her Application that
15 similarly situated White Americans would not have been required to expend.
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18 **50. Class Definition:** Plaintiff brings this action pursuant to Fed R. Civ. P. 23 on behalf of a
19 Class of similarly situated individuals and entities, defined as follows:

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1 Excluded from the Class are: (1) the Judge to whom this case is assigned and the Judge's
2 immediate family members; (2) Defendant, Defendant's agents, Defendant's employees, and other
3 affiliates of Defendant; (4) any person(s) who executes and files a timely request for exclusion from the
4 Class; (5) any persons who have had their claims in this matter finally adjudicated and/or otherwise
5 released; and (6) the legal representatives, successors and assigns of any such excluded person.

6
7 **51. Numerosity and Ascertainability:** Upon information and belief, the Class is comprised
8 of more than 40 members. This conclusion is reasonable because Wells Fargo is one of the largest
9 mortgage providers in the country, and, based on publicly available data collected by the CFPB in
10 accordance with the HMDA, received over 7,000 Applications for mortgage loans from Black Americans
11 in 2019. The Class is so numerous that joinder of all members is impractical. The exact number of
12 members in the Class is presently unknown, can only be ascertained through discovery, and can easily be
13 identified through Defendant's records or by other means.

14
15 **52. Commonality and Predominance:** All members of the Class have been subject to and
16 affected by a uniform course of conduct: specifically, Wells Fargo's pattern and practice of racial
17 discrimination against Black Americans. Accordingly, there are questions of law and fact common to the
18 proposed Class that predominate over any individual questions.

19
20 **53. Typicality:** Plaintiff's claims are typical of the claims of the Class. As previously
21 explained, Plaintiff, like all Class members, was subject to Wells Fargo's pattern and practice of racial
22 discrimination against Black Americans, and did not receive a mortgage loan from Wells Fargo on terms
23 that would have been the same as a similarly situated White Americans. Therefore, Plaintiff and Class
24 members were all harmed in the same way, and incurred damages as a result.

25
26 **54. Adequacy:** Plaintiff will adequately represent the interests of the Class and does not have
27 adverse interests to the Class. If individual Class members prosecuted separate actions it may create a risk
28

of inconsistent or varying judgments that would establish incompatible standards of conduct. A class action is the superior method for the quick and efficient adjudication of this controversy. Plaintiff's counsel has extensive experience litigating consumer class actions.

COUNT I
Violations of the Equal Credit Opportunity Act
15 U.S.C. §§ 1691, *et seq.*
On Behalf of Plaintiff and the Class

55. Plaintiff repeats and realleges paragraphs 1-54 with the same force and effect as though fully set forth herein.

56. The ECOA makes it “unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction...on the basis of race [or] color.” 15 U.S.C. § 1691(a)(1).

57. As one of the largest mortgage lenders in the country, Defendant “regularly extends, renews, or continues credit” and/or “regularly arranges for the extension, renewal, or continuation of credit.” 15 U.S.C. § 1691a(e). Therefore, Defendant is a “creditor,” as that term is defined by the ECOA.

58. Plaintiff and Class members each applied “for an extension, renewal, or continuation of credit” from Wells Fargo. 15 U.S.C. § 1691a(b). Therefore, Plaintiff and Class members are each an “applicant,” as that term is defined by the ECOA.

59. Pursuant to 15 U.S.C. § 1691e, any creditor who violates the ECOA “shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.” 15 U.S.C. § 1691e(a). The ECOA further provides for recovery of attorneys’ fees incurred in connection with such a claim. 15 U.S.C. § 1691e(d).

60. In general, to state a claim under the ECOA, a plaintiff must allege that: “(1) [she] was a member of a protected class, (2) [she] applied for credit from the defendant, (3) [she] was qualified for credit but the defendant denied [her] credit application, and (4) the defendant continued to engage in the

type of transaction in question with other parties with similar qualifications.” *E.g., Germain v. M & T Bank Corp.*, 111 F.Supp.3d 506, 526 (S.D.N.Y. 2015) (internal alterations and quotations omitted).

61. Importantly, however, ECOA “protection is not limited to those applicants who were rejected.” *E.g., Wilson v. Toussie*, 260 F.Supp.2d 530, 541 (E.D.N.Y. 2003) (quoting *Hargraves v. Capital City Mortg. Corp.*, 140 F.Supp.2d 7, 23 (D.D.C. 2000)). Accordingly, a plaintiff can also state a claim under the ECOA where, as a result of racial discrimination, a creditor’s “investigation procedures” are more onerous, or a borrower receives approval for a loan, but on less favorable terms. *E.g., Hargraves*, 140 F.Supp.2d at 23; *Phillips v. Better Homes Depot, Inc.*, 2003 WL 25867736, at *22 (E.D.N.Y. 2003).

62. Plaintiff and Class members are all Black Americans who submitted Applications for credit from Defendant to obtain or refinance mortgage loans secured by residential real property.

63. As a direct and proximate result of Wells Fargo’s pattern and practice of racial discrimination against Black Americans, Plaintiff’s and Class members’ Applications were either (1) denied by Wells Fargo, despite the fact that a similarly situated White applicant would have been approved, (2) never completed because of Wells Fargo’s unreasonable demands that would not have been imposed by Wells Fargo in connection with a similarly situated White applicant, or (3) granted by Wells Fargo, but on significantly less favorable terms than a similarly situated White borrower would have received.

64. Plaintiff and Class members were harmed by Defendant’s violations of the ECOA in one or more of the following ways: (1) they were unable to obtain or refinance mortgage loans to which they were qualified; (2) they were unable to obtain or refinance mortgage loans on the same (more favorable) terms as White Americans; (3) they were unable to purchase real property that similarly situated White

Americans would have been able to purchase; and (4) they spent time and money pursuing mortgage loans that similarly situated White Americans would not have been required to expend.

65. Plaintiff, individually, and on behalf of the Class, seeks recovery of actual damages, punitive damages, and attorneys' fees and costs incurred connection with Defendant's violations of the ECOA.

COUNT II
Violations of the Fair Housing Act
42 U.S.C. §§ 3601, *et seq.*
On Behalf of Plaintiff and the Class

66. Plaintiff repeats and realleges paragraphs 1-54 with the same force and effect as though fully set forth herein.

67. The FHA makes it "unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color...or national origin." 42 U.S.C. § 3605(a).

68. As one of the largest mortgage lenders in the country, Defendant's business includes engaging in residential real estate-related transactions because it regularly makes loans and provides financial assistance in connection with "purchasing, constructing, improving, repairing, or maintaining a dwelling," and those loans are "secured by residential real estate." 42 U.S.C. § 3605(b). Therefore, Defendant is subject to the FHA's anti-discrimination provisions.

69. 42 U.S.C. § 3613 provides for a private right of action against any person who violates the FHA. The FHA further provides for recovery of attorneys' fees incurred in connection with such a claim. 42 U.S.C. § 3613(c)(2).

1 **70.** In general, to state a claim under the FHA, “plaintiffs who allege disparate treatment must
2 show: (1) that they are members of a protected class; (2) that they sought and were qualified to rent or
3 purchase the housing; (3) that they were rejected; and (4) that the housing opportunity remained available
4 to other renters or purchasers.” *M & T Mortg. Corp. v. White*, 736 F. Supp. 2d 538, 574 (E.D.N.Y. 2010)
5 (internal quotations omitted).

6 **71.** However, like claims under the ECOA, racial discrimination need not result in an outright
7 denial of an application for credit for purposes of stating a claim under the FHA; any less favorable
8 outcome is sufficient. *E.g., Hargraves*, 140 F.Supp.2d at 20-22.

9 **72.** Plaintiff and Class members are all Black Americans who submitted Applications for credit
10 from Defendant to obtain or refinance mortgage loans secured by residential real property.

11 **73.** As a direct and proximate result of Wells Fargo’s pattern and practice of racial
12 discrimination against Black Americans, Plaintiff’s and Class members’ Applications were either (1)
13 denied by Wells Fargo, despite the fact that a similarly situated White applicant would have been
14 approved, (2) never completed because of Wells Fargo’s unreasonable demands that would not have been
15 imposed by Wells Fargo in connection with a similarly situated White applicant, or (3) granted by Wells
16 Fargo, but on significantly less favorable terms than a similarly situated White borrower would have
17 received.

18 **74.** Plaintiff and Class members were harmed by Defendant’s violations of the FHA in one or
19 more of the following ways: (1) they were unable to obtain or refinance mortgage loans to which they
20 were qualified; (2) they were unable to obtain or refinance mortgage loans on the same (more favorable)
21 terms as White Americans; (3) they were unable to purchase real property that similarly situated White
22 Americans would have been able to purchase; and (4) they spent time and money pursuing mortgage loans
23 that similarly situated White Americans would not have been required to expend.
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1 75. Plaintiff, individually, and on behalf of the Class, seeks recovery of actual damages,
 2 punitive damages, and attorneys' fees and costs incurred connection with Defendant's violations of the
 3 FHA.

4
 5 **COUNT III**
 6 **Violations of Section 1981**
 7 **42 U.S.C. § 1981**
 8 **On Behalf of Plaintiff and the Class**

9 76. Plaintiff repeats and realleges paragraphs 1-54 with the same force and effect as though
 10 fully set forth herein.

11 77. Under Section 1981, "all persons within the jurisdiction of the United States shall have the
 12 same right in every State and Territory to make and enforce contracts," which "includes the making,
 13 performance, modification, and termination of contracts." 42 U.S.C. § 1981(a)-(b). The rights guaranteed
 14 by Section 1981 "are protected against impairment by nongovernmental discrimination" (42 U.S.C. §
 15 1981(c)), and are enforceable through 42 U.S.C. § 1988, which provides for the recovery of attorney fees'
 16 and costs incurred in connection with a successful action under Section 1981 (42 U.S.C. § 1988(b)).

17 78. "To establish a claim under [Section] 1981, a plaintiff must allege facts in support of the
 18 following elements: (1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the
 19 basis of race by the defendant; and (3) the discrimination concerned one or more of the activities
 20 enumerated in the statute (*i.e.*, make and enforce contracts, sue and be sued, give evidence, etc.)." *E.g.*,
 21 *Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085, 1087 (2nd Cir. 1993).

22 79. Plaintiff and Class members are all Black Americans who submitted Applications for credit
 23 from Defendant to obtain or refinance mortgage loans secured by residential real property. In other words,
 24 Plaintiff and Class members are each a member of a racial minority who sought to engage in the making
 25 of a contract.
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1 **80.** As a direct and proximate result of Wells Fargo's pattern and practice of racial
2 discrimination against Black Americans, Plaintiff's and Class members' Applications were either (1)
3 denied by Wells Fargo, despite the fact that a similarly situated White applicant would have been
4 approved, (2) never completed because of Wells Fargo's unreasonable demands that would not have been
5 imposed by Wells Fargo in connection with a similarly situated White applicant, or (3) granted by Wells
6 Fargo, but on significantly less favorable terms than a similarly situated White borrower would have
7 received.

8
9 **81.** Accordingly, Defendant denied Plaintiff and Class members the same ability to make and
10 enter into contracts "as is enjoyed by White citizens" of the United States. 42 U.S.C. § 1981(a).

11 **82.** As evidenced by the pervasiveness of Defendant's racial discrimination in its lending
12 practices, Defendant intended to discriminate against Plaintiff and Class members on the basis of race.

13 **83.** Plaintiff and Class members were harmed by Defendant's violations of Section 1981 in
14 one or more of the following ways: (1) they were unable to obtain or refinance mortgage loans to which
15 they were qualified; (2) they were unable to obtain or refinance mortgage loans on the same (more
16 favorable) terms as White Americans; (3) they were unable to purchase real property that similarly situated
17 White Americans would have been able to purchase; and (4) they spent time and money pursuing
18 mortgage loans that similarly situated White Americans would not have been required to expend.

19
20 **84.** Plaintiff, individually, and on behalf of the Class, seeks recovery of actual damages,
21 punitive damages, and attorneys' fees and costs incurred connection with Defendant's violations of
22 Section 1981.

23
24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff IFEOMA EBO, individually, and on behalf of the Class, prays for an
26 Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant as to each and every Count, as applicable;
- D. Awarding Plaintiff and the Class actual damages, statutory damages, and punitive in an amount to be determined at trial as to each and every Count, as applicable;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law, as to each and every Count, as applicable; and
- F. Granting all such further and other relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

DATED: April 26, 2022

/s/ Alisa Adams

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**ELRETHA PERKINS and LARONICA
JOHNSON**, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

WELLS FARGO, N.A., a Delaware
Corporation; **WELLS FARGO HOME
MORTGAGE, INC.**, a Delaware
Corporation,

Defendants.

Case No. 3:22-cv-3455

CLASS ACTION COMPLAINT

- (1) Violation of the Equal Credit
Opportunity Act, 15 U.S.C. § 1691, et
seq.
(2) Violation of the Fair Housing Act, 42
U.S.C. § 3601, et seq.
(3) Violation of the Civil Rights Act of 1866,
42 U.S.C. § 1981, et seq.
(4) Violation of the California Unfair
Competition Law, Cal. Bus. & Pro. Code
§17200, et seq.

JURY TRIAL DEMANDED

1 Plaintiffs Elretha Perkins and Laronica Johnson, on behalf of themselves and all others
2 similarly situated, bring this action against Defendants Wells Fargo, N.A. and Wells Fargo Home
3 Mortgage (The “Defendants” or “Wells Fargo”) to address the substantial injuries they and all
4 others similarly situated sustained arising from Wells Fargo’s illegal discrimination, in violation
5 of the Equal Credit Opportunity Act, the Fair Housing Act, the Civil Rights Act of 1866, and the
6 California Unfair Competition Law.
7

8 **I. NATURE OF THE ACTION**

9
10 1. Homeownership in the United States of America is a central tenet of the American
11 Dream. For millions of Americans, homeownership is the foundation of family, community, and
12 human dignity.

13 2. By design, however, federal agencies and financial institutions in charge of making
14 homeownership a reality have long placed African Americans and other racial minorities at a
15 structural disadvantage.
16

17 3. Soon after Congress passed the National Housing Act of 1934 (NHA) into law,
18 federal agencies, and financial institutions responsible for fulfilling the NHA’s promise drew maps
19 across the United States, placing “greenlines” around neighborhoods that were predominantly
20 white Anglo-Saxon and Northern European, and “redlines” around neighborhoods that were
21 predominantly African American and other racial minority populations.
22

23 4. This discriminatory practice of “redlining” caused African American home loan
24 applicants to be denied more often than their similarly situated white counterparts, to receive less
25 favorable terms than their similarly situated white counterparts, and to receive inferior treatment
26 as part of the home loan application process than their similarly situated white counterparts.
27
28

1 5. In 1968, Congress enacted the Fair Housing Act, seeking to, among other things,
2 end the discriminatory practice of redlining.

3 6. Despite decades of efforts since the Fair Housing Act, recent data from federal
4 housing agencies indicate that African Americans and other racial minorities, of worthy credit,
5 continue to face discrimination in access to, and quality of, home loans when compared to their
6 similarly situated white counterparts. Among those who continue to contribute to this injustice is
7 Wells Fargo.
8

9 7. Indeed, data reviewed reveals that in 2020, Wells Fargo rejected a majority of
10 completed home loan applications submitted by African American homeowners as compared to
11 similarly situated white applicants.¹ Moreover, the application process designed by Wells Fargo is
12 more difficult for African American applicants to complete, resulting in 27% of all African
13 American applicants to withdraw their application before completing it.²
14

15 8. Wells Fargo has a long history of discrimination against African Americans and
16 other racial minorities in the home loan arena. For example, in 2011, a jury found Wells Fargo
17 guilty of systematically discriminating against minority home buyers by using a computer software
18 in part to identify minority homeowners which resulted in them paying more for their home loans
19 than white borrowers. *See Opal Jones, et. al v. Wells Fargo Bank, N.A., et al.*, Case No. BC337821
20 (Los Angeles Superior Court. 2011), *rev'd on other grounds*, Case No. B243333, 2015 WL
21 662081. The following year, a United States Department of Justice (DOJ) Civil Rights Division
22 investigation found that in more than 34,000 cases, Wells Fargo charged Black and Hispanic
23 customers higher fees and interest rates than white customers with similar credit profiles.³ Despite
24
25
26

27 ¹ <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing>

28 ² *Id.*

³ *See Justice Department Reaches Settlement with Wells Fargo Resulting in More Than \$175 Million in Relief for Homeowners to Resolve Fair Lending Claims* (DOJ Release) July 12, 2012, <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief> (accessed April 10, 2022).

1 having to be held accountable for its discriminatory conduct many times before, Wells Fargo
2 continues its pattern and practice of discrimination against non-white borrowers.

3 9. Starting in at least 2018, and continuing to the present, Wells Fargo has
4 discriminated against African Americans, and other racial minorities, by deploying a modern home
5 loan scheme that is tantamount to 21st century redlining.

7 10. Wells Fargo deploys this discriminatory scheme in two critical ways. First, Wells
8 Fargo uses a computer system which deploys automated algorithms and artificial intelligence-like
9 machine learning as part of its home loan decisions. These algorithms and artificial intelligence
10 machine learning technologies—like the redlining maps of the 1930’s—select geographic areas
11 that are predominantly African American (and other racial minorities) and subject those
12 geographies and persons within those geographies to adverse treatment as part of home loan
13 decisions.

15 11. For example, Wells Fargo’s algorithm labels certain neighborhoods that are
16 predominantly Black as neighborhoods ineligible for rapid loan processing, a service provided to
17 similarly situated white applicants. As a result, Wells Fargo loan personnel have told African
18 American loan applicants who live in predominantly Black neighborhoods that they would not
19 receive the same rapid application process as their white counterparts.⁴

22 12. Second, Wells Fargo applies several pretextual actions in the home loan
23 application process which are specifically targeted at non-white borrowers. These actions include,
24 but are not limited to, (i) providing African American applicants with an inferior and slower
25 valuation process for homes in predominantly Black neighborhoods, (ii) placing loan officers who
26 were able to process applications significantly farther away from Black applicants than their white
27

28
⁴ See *Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom* (*bloomberg.com*),
www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/, (accessed March 28, 2022).

1 counterparts, and (iii) delaying processing of applications from African Americans, when
2 compared to their similarly situated white counterparts.

3
4 13. Based on the data, the disparate impact of Wells Fargo's discriminatory scheme is
5 quite clear. A white applicant seeking to refinance their home loan, who earned between \$0 and
6 \$63,000 per year were more likely to have their home loan financing application approved by
7 Wells Fargo than a Black applicant seeking to refinance their home loan, who earned between
8 \$120,000 and \$168,000 per year.⁵ As a result of Wells Fargo's barrage of pretextual actions aimed
9 at deterring Black applicants, more than one-quarter of all Black homeowners who began an
10 application to finance their home loan through Wells Fargo did not finish their application.⁶

11
12 14. Wells Fargo was the only major lender in the United States of America that
13 approved a smaller share of refinancing applications from Black Americans in 2020 than it had in
14 2010.⁷

15
16 15. Notably, Wells Fargo was the *only* major lending institution in the United States to
17 reject the majority of Black applicants seeking to refinance their homes. Wells Fargo's conduct is
18 especially pernicious with regards to refinancing—as opposed to a new loan application—because
19 with a refinance, the applicant has already established an ability to pay a mortgage with a *higher*
20 interest rate than would be secured with a refinanced loan.

21
22 16. Wells Fargo's discrimination is even more stark when its treatment of Black home
23 loan applicants is compared to other financial institutions.

24 17. By way of example, during the same time period, JP Morgan Chase & Co. approved
25 81% of Black applicants seeking to refinance their home loan. Bank of America Corp. approved
26

27
28 ⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

over two-thirds of Black applicants; and Rocket Mortgage approved nearly 8-in-10 Black applicants.⁸ Overall, other comparable lenders approved 71% of Black applicants seeking to refinance their home loans.⁹ Meanwhile, Wells Fargo approved only 47% of Black applicants.

18. One of those many Americans impacted by Wells Fargo’s discriminatory scheme is Plaintiff Elretha Perkins. Ms. Perkins is a successful small business owner with a 40+ year career in North Carolina’s childcare and transportation industries. Ms. Perkins is a business leader, a graduate of North Carolina A&T State University, a prominent Historically Black College and University (“HBCU”), and leader within her local African American community. In addition to her personal successes, she has raised extremely successful children who are active in Georgia’s film and entertainment industry.

19. Ms. Perkins has consistently made payments on her home loan, originally financed by Wells Fargo. Ms. Perkins’ creditworthiness is evidenced by her 720-credit score. Yet, despite her successful 40+ career and clear creditworthiness, when Ms. Perkins sought to refinance an equity line of credit, Wells Fargo subjected her to delay tactics and overt acts of discrimination.

20. Ms. Perkins faced a multitude of pretextual obstacles and actions by Wells Fargo, including mandating that in order for her to refinance her equity line of credit she would have to apply for a modification under a “hardship” program, as if the loan was in distress, despite Ms. Perkins not facing any financial hardship or need to modify the loan under a loss mitigation program. Wells Fargo also required her to speak with third-party entities to simply make payments on her equity line of credit. Ms. Perkins was given the runaround to such an extent that she has

⁸ See *Wells Fargo refinancing loan approvals lower for Blacks* (Philadelphia Tribune), www.phillytrib.com/news/business/wells-fargo-refinancing-loan-approvals-lower-for-blacks/article_379b95bd-d8a7-5402-abb9-d569c68bbbc6.html, (accessed March 26, 2022).

⁹ See *Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom* (bloomberg.com), www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/, (accessed March 28, 2022)

had to submit the same tax and income documents multiple times only to face more delays from Wells Fargo in processing her refinancing request.

21. Another American impacted by Wells Fargo’s discriminatory scheme is Plaintiff Laronica Johnson. Ms. Johnson is a caring and committed educator. Ms. Johnson received her bachelor’s degree from Texas Southern University and her master’s degree from Prairie View A&M University, both HBCU’s. Today, Ms. Johnson works to ensure that all children receive equal treatment and access to education as a special education teacher.

22. Ms. Johnson has consistently made payments on her home loan. Ms. Johnson has never been late on her current home mortgage payment. Her creditworthiness is evidenced by her 680-credit score.

23. Despite her creditworthiness, Wells Fargo provided a series of pretextual reasons in discriminating against Ms. Johnson. For example, contrary to the purpose of borrowers refinancing their home mortgage loans, Wells Fargo personnel told Ms. Johnson that refinancing did not make sense in her case and would result in her mortgage and/or interest rate increasing. In addition, despite approving many other similarly situated white applicants, Wells Fargo personnel told Ms. Johnson that refinancing was “just not worth it.” Between 2019 and 2022, Ms. Johnson has applied three times to refinance her home mortgage loan with Wells Fargo. Wells Fargo denied Ms. Johnson each time.

24. The experiences of Ms. Perkins and Ms. Johnson mirror the experiences of so many Black and Brown Americans who have been damaged by Wells Fargo’s systemic discrimination. Wells Fargo’s discriminatory conduct violates the commercial and civil rights of Class members and has caused hundreds of millions of dollars in damages to the Class. Individually, and as Class Representatives, Ms. Perkins and Ms. Johnson bring this action against Wells Fargo to restore the

1 Class any amounts which they otherwise would have been entitled to under law, together with any
2 other equitable and remedial relief as the Court may deem appropriate.

4 II. JURISDICTION AND VENUE

5 25. Plaintiffs bring this action under the Equal Credit Opportunity Act, 15 U.S.C.
6 § 1691 *et seq.*, the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*, and the Civil Rights Act of
7 1866, 42 U.S.C. § 1981, to secure declaratory and injunctive relief, statutory damages, costs of
8 suit, and reasonable attorneys' fees for the injuries that Plaintiffs and members of the Class
9 sustained as a result of Defendants' violations.

11 26. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1332(d), and
12 1343, regarding Plaintiffs' claims arising under the Equal Credit Opportunity Act, 15 U.S.C.
13 § 1691 *et seq.*, the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*, and the Civil Rights Act of
14 1866, 42 U.S.C. § 1981.

16 27. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a), regarding
17 Plaintiffs' claims arising under California's Unfair Competition Law, Cal. Bus. And Pro. Code
18 § 17200 *et seq.*, because this claim is so related to the federal Equal Credit Opportunity Act, the
19 Fair Housing Act of 1968, and the Civil Rights Act of 1866 claims that they form part of the same
20 case or controversy under Article III of the United States Constitution.

22 28. This Court has personal jurisdiction over Defendants because, among other things,
23 they: (a) transacted business throughout the United States, including in this District; (b) the illegal
24 discrimination alleged took place in this District; (c) had maintained substantial aggregate contacts
25 with the United States as a whole, including in this District; (d) had substantial contact in various
26 states in the United States, including in this District; and (e) directed its illegal discrimination and
27 had direct, substantial, reasonably foreseeable, and intended effect of causing injury to persons
28

1 residing in, located in, or doing business throughout the United States, including in this District.
2 Defendants also conduct business throughout the United States, including in this District, and have
3 purposefully availed themselves of the laws of the United States.
4

5 29. This District is the appropriate venue under 28 U.S.C. §1391(c), because during the
6 Class Period, Defendants transacted business in this District, and a substantial part of the events
7 giving rise to the Plaintiffs' claims took place in this District.
8

9 III. PARTIES

10 A. Plaintiffs

11 Elretha Perkins

12 30. Plaintiff Elretha Perkins is a Black female homeowner with a 720-credit score, and
13 is a natural person and citizen of Eden, North Carolina. Ms. Perkins owns homes in both Eden,
14 North Carolina and Dacula, Georgia. Ms. Perkins' Dacula, Georgia home was financed through
15 Wells Fargo. Ms. Perkins has been a Wells Fargo customer for nearly 20 years.
16

17 Laronica Johnson

18 31. Plaintiff Laronica Johnson is a Black female homeowner with a 680-credit score,
19 and is a natural person and citizen of Houston, Texas. Ms. Johnson owns a home in Houston,
20 Texas. Ms. Johnson unsuccessfully sought to refinance her home mortgage loan through Wells
21 Fargo on three separate occasions between 2019 and 2022.
22

23 B. Defendants

24 Wells Fargo, N.A.

25 32. Defendant Wells Fargo, N.A. a publicly traded, global financial services firm and
26 a Fortune 500 corporation incorporated in the State of Delaware, with its principal place of
27
28

1 business in the State of California. As of 2020, Defendant Wells Fargo N.A. has assets of
2 approximately \$1.9 trillion. Among other things, Wells Fargo, N.A. is a mortgage lender.

3
4 Wells Fargo Home Mortgage

5 33. Defendant Wells Fargo Home Mortgage is a home lending company that is one of
6 Wells Fargo's various corporate entities. Defendant Wells Fargo Home Mortgage originates and
7 services approximately \$300 billion worth of loans per year. Wells Fargo Home Mortgage is
8 incorporated in the State of Delaware and has its principal place of business in the State of Iowa.
9

10 **IV. FACTUAL ALLEGATIONS**

11
12 **A. Access to Home Loan Refinancing Hits Record Highs**

13
14 34. Refinancing a home loan provides homeowners the ability to reduce the interest on
15 their home loan payments, to "cash out" and capture the additional equity their homes have gained
16 since the previous financing and may permit home loan borrowers to save money on the principal
17 of their loan.

18 35. Because of historically low interest rates, millions of Americans have applied to
19 refinance their homes over the last few years. These homeowners have refinanced over \$5 trillion
20 in mortgage value.
21

22 **B. Wells Fargo's Discriminatory Scheme**

23
24 36. Wells Fargo executes its discriminatory scheme in two key ways. First, Wells
25 Fargo utilizes a computer system with a discriminatory automated algorithm and artificial
26 intelligence machine learning program to make home loan decisions. These discriminatory
27 algorithms and artificial intelligence machine learning technologies—like the redlining maps of
28 the 1930's—select geographic areas that are predominantly Black, and then either deny home loan

opportunities to Black applicants or provide inferior terms and processing than the terms and processing received by similarly situated white applicants. For example, Wells Fargo's algorithms and artificial intelligence machine identified geographic neighborhoods eligible for quick evaluations of refinancing applicants. This algorithm consistently labeled predominantly Black neighborhoods *ineligible* for rapid processing.

37. Second, Wells Fargo employed a series of pretextual actions that are instrumental to further its discriminatory scheme.

38. One pretextual action was that Wells Fargo placed its loan officers significantly farther away from Black applicants to reduce the amount and frequency of home loan applications from Black applicants.

39. Another pretextual action was Wells Fargo delaying the home loan valuation process for Black applicants as well as delaying the valuation process of homes located in predominantly Black neighborhoods. The valuation process is critical to any home loan and home sale transaction. By deploying this pretextual action, Wells Fargo treated Black applicants differently than their similarly situated white counterparts.

40. A third pretextual action was the intentional delay in the processing of applications from African Americans, when compared to their similarly situated white counterparts. Wells Fargo regularly approved refinancing applications of non-Black homeowners in just weeks but took significantly longer to approve the applications of Black homeowners, sometimes taking months.

C. Data Shows Wells Fargo Disparately Treated Its Black Home Loan Applicants.

41. The impact of Wells Fargo's discriminatory scheme is also evident from the data.

1 42. In 2020, Wells Fargo approved Black homeowner refinancing applications at a rate
2 far lower than that of *any* other major lender in the United States of America.

3 43. For instance, JP Morgan Chase & Co. approved 81% of Black applicants seeking
4 to refinance their home loans. Bank of America Corp. approved over two-thirds of Black
5 applicants; and Rocket Mortgage approved nearly 8-in-10 Black applicants.

6 44. Overall, other comparable lenders approved 71% of Black applicants seeking to
7 refinance their home loans, whereas Wells Fargo approved only 47%.

8
9
10 **D. Plaintiffs Elretha Perkins and Laronica Johnson Were Harmed by Wells Fargo's**
11 **Race-Based Discrimination.**

12 45. Plaintiff Elretha Perkins purchased her home in Dacula, Georgia in 2006, through
13 a Wells Fargo home loan for \$470,000 ("Home Loan"). Today, Ms. Perkin's Dacula home is
14 worth approximately \$630,000. As part of this home loan approval, but without Ms. Perkins
15 knowledge, Wells Fargo added a second home equity loan ("Home Equity Loan") to Ms. Perkins
16 lending package. Ms. Perkins consistently made payments to Wells Fargo from 2006 through
17 2018.

18 46. In 2018, Ms. Perkins' Home Loan contract was moved to a third-party mortgage
19 servicer, Specialized Loan Services. Ms. Perkins' Home Equity Loan, however, continued to be
20 serviced by Wells Fargo. Ms. Perkins began making home loan payments to Specialized Loan
21 Services, and Home Equity Loan payments to Wells Fargo.

22 47. In 2021, Ms. Perkins sought to refinance her Home Equity Loan through Wells
23 Fargo. Because of her high credit score and history with Wells Fargo, Ms. Perkins believed
24 refinancing her Home Equity Loan would be easy. She was sadly mistaken.

1 48. For example, upon initially seeking to refinance her Home Equity Loan, Wells
2 Fargo repeatedly asked Ms. Perkins to resubmit paperwork because Wells Fargo personnel claimed
3 that the information she had submitted was either not received, missing, or somehow lost. Wells
4 Fargo personnel also took weeks or months to respond to Ms. Perkins' inquiries about the status
5 of her Home Equity Loan refinance request.
6

7 49. During this time, Wells Fargo mandated that for Ms. Perkins to refinance her Home
8 Equity Loan she would have to apply for a loan modification classifying the loan with "Hardship"
9 status, despite Ms. Perkins facing no financial hardship or requesting any hardship status. Wells
10 Fargo then advised Ms. Perkins that the only way for her to be considered for a Home Equity Loan
11 refinance would be for her to fill out paperwork seeking mortgage assistance through loss
12 mitigation.
13

14 50. Although Ms. Perkins was not under any financial hardship, she very much
15 desired to refinance her Home Equity Loan so she acquiesced to Wells Fargo's request and filled
16 out hardship paperwork. Despite following Wells Fargo's directions for nearly 12 months,
17 including submitting paperwork for mortgage assistance and "hardship" status that Ms. Perkins
18 did not need, Wells Fargo has constructively denied her home loan refinance request.
19

20 51. Plaintiff Laronica Johnson purchased her home in Houston, Texas in 2016, for
21 approximately \$163,000. Her home is currently worth approximately \$261,000. In 2018, Wells
22 Fargo notified Ms. Johnson that it would take over servicing her mortgage, which was originated
23 with a third-party, TexMex Mortgage Company.
24

25 52. In July 2019, Ms. Johnson first applied to refinance her home mortgage loan
26 through Wells Fargo. Contrary to the entire purpose of refinancing a home mortgage, Wells Fargo
27 personnel told Ms. Johnson that refinance would cost her *more* money than her initial mortgage
28

1 agreement. Following this illogical explanation, Wells Fargo personnel told Ms. Johnson that it
2 “just did not make sense” for Ms. Johnson to obtain a home loan refinance at this time.

3
4 53. In October 2020, Ms. Johnson again applied to refinance her home mortgage loan
5 through Wells Fargo. This time, Wells Fargo gave Ms. Johnson the runaround, farcically
6 explaining that it just would not be “worth it” for her to refinance her home mortgage loan and that
7 based upon the application she submitted, it did not look like refinancing would result in a lower
8 interest rate. When Ms. Johnson inquired into why, especially in light of her 680-credit score,
9 Wells Fargo personnel relied on a nonsensical excuse that refinancing was simply not in Ms.
10 Johnson’s best interest.
11

12 54. In February 2022, Ms. Johnson applied to refinance her home mortgage loan
13 through Wells Fargo for a third time. During this attempt, Wells Fargo personnel told Ms. Johnson
14 that refinancing her home mortgage loan, which is typically sought for the purpose of reducing
15 monthly payments for a borrower, would result in Ms. Johnson paying an additional \$10,000 on
16 her mortgage. When Ms. Johnson explained to Wells Fargo that such an increase does not make
17 sense in light of her knowing others who had been approved for refinancing, Wells Fargo continued
18 the denial.
19

20 55. In causing injury to the Plaintiffs and the members of the Class, Defendants have
21 acted intentionally, maliciously, and with willful, callous, wanton, and reckless disregard for the
22 Plaintiffs’ and Class members’ rights.
23

24 **V. CLASS ACTION ALLEGATIONS**

25 56. Plaintiffs Elretha Perkins and Laronica Johnson bring this action on behalf of
26 themselves and all others similarly situated as a class action under Rules 23(a), (b)(2) and (b)(3)
27 of the Federal Rules of Civil Procedure on behalf of the members of the following Class:
28

1 All Black persons, as well as other racial minorities, in the United States of
2 America, who from January 1, 2018 through the Present (the “Class Period”),
3 submitted, or attempted to submit, an application to finance or refinance their home
4 mortgage through the Defendants that was (i) processed at a rate slower than that
5 of the average processing time of applications made by non-Black or other non-
6 racial minority applicants; or (ii) whose application was denied; or (iii) whose
7 resulting refinanced loans were made at higher interest rates as compared to
8 similarly situated non-Black applicants.

9 57. Plaintiffs and Class members reserve the right to amend the Class definitions as
10 discovery proceeds and to conform to the evidence. Excluded from the Class are Defendants and
11 their employees, affiliates, parent entities, subsidiaries, and co-conspirators, whether or not named
12 in this complaint, and the United States Government.

13 58. The exact size of the Class is unknown at this time because the information is in
14 the exclusive control of Defendants. However, upon information and belief and due to the nature
15 of commerce involved, there are thousands of Class members geographically dispersed throughout
16 the United States, such that joinder of all class members is impracticable.

17 59. The Class is readily ascertainable by business records and other data from
18 Defendants.

19 60. Plaintiffs’ claim is typical of the claims of the members of the Plaintiff Class
20 because Plaintiffs and members of the Class all submitted applications for home loan refinancing
21 to Defendants, and therefore Plaintiffs’ claim arises from the same common course of conduct
22 giving rise to the claims of the members of the Class and the relief sought is common to the Class.

23 61. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs’
24 interests are aligned with, and not antagonistic to, the Class.

25 62. Plaintiffs has retained counsel competent and experienced in class action litigation.

26 63. Numerous questions of law and fact common to each Class member exist that
27 predominate over questions affecting only individual members, including, but not limited to:
28

- A.** Whether Defendants discriminated against Plaintiffs and the Class;
- B.** Whether such discrimination is a violation of the Equal Credit Opportunity Act; the Fair Housing Act; the Civil Rights Act of 1866; and California's Unfair Competition Law;
- C.** Whether Defendants' acts, policies, and practices have a disparate impact on the basis of race, color, and/or national origin with respect to credit transactions, as described herein, on the basis of race;
- D.** Whether Defendants' acts, policies, and practices have provided and continue to provide different terms, conditions, and privileges on the basis of race, color, and/or national origin in connection with the making of residential real estate-related transactions;
- E.** The natural persons involved in the alleged discrimination, and their acts in furtherance of the illegal practice;
- F.** The period of time the alleged discrimination existed;
- G.** Whether and the extent to which Defendants' discrimination resulted in increased interest and/or principal amounts incurred by Plaintiffs and Class Members above natural market levels;
- H.** The nature and scope of the injunctive relief required to remedy continuous illegal discrimination;
- I.** The measure of damages suffered by Plaintiffs and the Class Members.

64. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all damaged Class members is impractical. Prosecution as a class action will eliminate the possibility of repetitious litigation.

1 The damages suffered by individual Class members are relatively small, given the expense and
2 burden of individual prosecution of the claims asserted in this litigation. Absent a class action, it
3 would not be feasible for Class members to seek redress for the violations of law herein alleged.
4 Further, individual litigation presents the potential for inconsistent or contradictory judgments and
5 would greatly magnify the delay and expense to all parties and to the court system. Therefore, a
6 class action presents far fewer case management difficulties and will provide the benefits of unitary
7 adjudication, economy of scale and comprehensive supervision by a single court. The Class is
8 readily definable and is one for which records likely exist in the files of Defendants.
9

10
11 65. Defendants' actions are ongoing and without Court intervention, will continue
12 unabated. Accordingly, Plaintiffs seek to represent the Class under Rule 23(b)(2) for an award of
13 declaratory and injunctive relief finding the Defendants' discriminatory actions improper and
14 enjoining the Defendants from continuing their acts of discrimination as described herein.
15

16 VI. CLAIMS FOR RELIEF

17 FIRST CLAIM FOR RELIEF

18 VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT

19 15 U.S.C. § 1691, *et seq.*

20 66. Plaintiffs incorporate by reference each of the allegations contained in the
21 preceding paragraphs as if fully set forth herein.
22

23 67. The Equal Credit Opportunity Act makes it unlawful for a creditor to discriminate
24 against any applicant with respect to any aspect of a credit transaction on the basis of race.

25 68. The Equal Credit Opportunity Act applies to all applications for financing,
26 including applications for refinancing like those the Plaintiffs, and all others similarly situated,
27 sought. Plaintiffs applied for credit by seeking to refinance their home loans.
28

69. Defendants are creditors because they regularly extend, renew, and continue the issuance of credit.

70. Defendants' denial of home loan refinance applications based on race, and Defendants' perpetual delays, roadblocks, and other pretextual actions, constitute race-based discrimination and are unlawful under the Equal Credit Opportunity Act.

71. Defendants' acts, policies, and practices are intentionally discriminatory on the basis of race, color, and/or national origin with respect to aspects of credit transactions, constitute redlining, and violate 15 U.S.C. § 1691(a)(1).

72. Defendants' acts, policies, and practices have a disparate impact on the basis of race, color, and/or national origin with respect to aspects of credit transactions in violation of 15 U.S.C. § 1691(a)(1).

73. Defendants have maintained these acts, policies, and practices continuously and without material change since at least 2018, and they constitute a continuing violation of the Equal Credit Opportunity Act.

74. Plaintiffs and all other similarly situated were harmed by Defendants' conduct, including, but not limited to, harm in the form of higher interest rates paid while applications were pending, higher interest rates paid upon a delayed approval, an inability to secure a "cash out" refinance loan, an inability to reduce the principal on a home loan payment, or from a denied application.

75. On behalf of themselves, and all others similar situated, Plaintiffs requests the relief set forth below.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FAIR HOUSING ACT OF 1968
42 U.S.C. § 3601, *et seq.*

76. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs as if fully set forth herein.

77. The Fair Housing Act makes it illegal to discriminate against any designated class of individuals in a residential real estate transaction.

78. Plaintiffs and all others similarly situated sought to engage in a residential real estate transaction with the Defendants.

79. Plaintiffs and all others similarly situated are African Americans, or other racial minorities, and therefore members of a protected class under the Fair Housing Act.

80. Defendants refused to transact business with Plaintiffs and all others similarly situated by (i) denying Black (or other racial minority) home loan applicants, of worthy credit, while approving home loan applications from their similarly situated white counterparts; (ii) approving Black (or other racial minority) home loan applicants, but with inferior terms than terms offered to similarly situated white home loan applicants; (iii) refusing to approve refinancing applications on the same window of time as applications made by other parties with similar qualifications that were not members of the protected class, or by (iv) constructively causing applicants to withdraw applications due to roadblocks and pretextual actions.

81. Defendants refused to transact business with Plaintiffs and all others similarly situated during the Class Period and at the same time transacted business with non-Black homeowners with similar qualifications.

82. Defendants' acts, policies, and practices have provided and continue to provide different terms, conditions, and privileges on the basis of race, color, and/or national origin in

1 connection with the making of residential real estate-related transactions, in violation of 42 U.S.C.
2 § 3605

3 83. Plaintiffs and all others similarly situated were disparately impacted by Defendants’
4 refusal to transact business with them on equal terms because, among other things, they: (i) paid
5 application fees for refinancing applications that were delayed or denied; (ii) continued to pay
6 higher interest rates while their delayed applications were pending; (iii) were provided with higher
7 interest rates than other similarly situated Non-Black applicants; or (iv) were unable to “cash out”
8 of their mortgage and capture increased home value since a previous financing.
9

10
11 84. Defendants have maintained these acts, policies, and practices continuously and
12 without material change since at least 2018, and they constitute a continuing violation of the Fair
13 Housing Act.

14
15 **THIRD CLAIM FOR RELIEF**
16 **VIOLATION OF THE CIVIL RIGHTS ACT OF 1866**
17 **42 U.S.C. § 1981, *et seq.***

18 85. Plaintiffs incorporate by reference each of the allegations contained in the
19 preceding paragraphs as if fully set forth herein.

20 86. Racial discrimination in contracting is prohibited by 42 U.S.C. § 1981, which
21 ensures that all people have the same right to make and enforce contracts “as is enjoyed by white
22 citizens.” Section 1981 was enacted to eradicate racial discrimination in contracting as is derived
23 from the Civil Rights Act of 1866 and applies with full force and effect today.

24 87. Defendants have engaged in, and is engaging in, pernicious, intentional racial
25 discrimination in contracting, which is illegal under § 1981. Section 1981 is broad, covering “the
26 making, performance, modification, and termination of contracts, and the enjoyment of all
27 benefits, privileges, terms, and conditions of the contractual relationship.”
28

1 88. African Americans and other racial minorities are a protected class under § 1981.
2 Plaintiffs and the Class Members are members of that class as they are African American or other
3 racial minorities.
4

5 89. As alleged herein, Plaintiffs and the Class Members attempted to contract with the
6 Defendants for home loans and loan refinancing, but the Defendants refused, engaging in a series
7 of pretextual acts meant to discriminate, including but not limited to, (i) denying Black (or other
8 racial minority) home loan applicants, of worthy credit; (ii) approving Black (or other racial
9 minority) home loan applicants, but with inferior terms than terms offered to similarly situated
10 white home loan applicants; (iii) refusing to approve refinancing applications on the same window
11 of time as applications made by other parties with similar qualifications that were not members of
12 the protected class, or by (iv) constructively causing applicants to withdraw applications due to
13 roadblocks and pretextual actions. Yet, Defendants have continued to contract with and make
14 themselves available to contract with similarly situated white home loan applicants.
15
16

17 90. Defendants have refused to contract with Plaintiffs and the Class Members for
18 home loan financing. Defendants have a pattern and practice of refusing to do business, or offering
19 unequal contracting terms to, African Americans and other racial minorities.
20

21 91. Plaintiffs and all other similarly situated were harmed by Defendants' conduct,
22 including, but not limited to, harm in the form of higher interest rates paid while applications were
23 pending, higher interest rates paid upon a delayed approval, an inability to secure a "cash out"
24 refinance loan, an inability to reduce the principal on a home loan payment, or from a denied
25 application.
26

27 92. Accordingly, Defendants' unlawful discrimination has caused Plaintiffs and those
28 similarly situated harm for Defendants' refusal to contract with Plaintiffs.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
Cal. Bus. & Pro. Code §17200, *et seq.*

93. Plaintiffs incorporates by reference each of the allegations contained in the preceding paragraphs as if fully set forth herein.

94. The California Unfair Competition Law (“UCL”) forbids “unlawful, unfair or fraudulent” conduct in connection with business activity.

95. Defendants’ business offering of financing loans and refinancing of existing loans is a business activity under the UCL.

96. Plaintiffs and others similarly situated are “persons” under the UCL.

97. Defendants’ conduct described herein constitutes unlawful competition, as in the course of engaging in the business acts described above, it engaged in conduct that constituted a predicate violation of the laws identified herein, namely the Equal Credit Opportunity Act and the Fair Housing Act, 42 U.S.C. § 1981.

98. Defendants’ conduct described herein constitutes unfair competition under the UCL, as Defendants deploy hidden business practices designed to deny, delay and refuse the financing and/or refinancing of loans of Black Americans, and subjecting those that are approved, to less favorable terms than white borrowers. Defendants’ acts and practices offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers. As there is no legitimate justification for these practices, which have a disproportionately negative impact on the public, in comparison to any fair business, purpose Defendants’ practices are unfair as defined under the UCL.

99. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the consuming public.

1 100. Defendants' acts and practices alleged above constitute unlawful business acts or
2 practices as they have violated federal law as described herein.

3 101. Defendants' conduct described herein constitutes fraudulent competition under the
4 UCL, as they claim they will fairly and quickly process the financing and refinancing applications
5 of all applicants, but instead use hidden business practices designed to deny, delay and refuse the
6 refinancing of loans of Black Americans, and subjecting those that are approved to less favorable
7 terms. These business practices are likely to deceive the public, and thus are fraudulent.
8

9 102. Plaintiffs and those similarly situated were injured by Defendants' refusal to
10 transact business with them because they paid application fees for financing and refinancing
11 applications that were delayed or denied, because they continued to pay higher interest rates while
12 their delayed applications were pending, because they were provided with higher interest rates
13 than other homeowners with similar qualifications, because they were offered less favorable terms
14 than white borrowers, and/or because their applications were denied.
15
16

17 **VII. REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class of similarly
19 situated persons, respectfully seek the following relief:

- 20 **A.** An order certifying this action as a class action under Fed. R. Civ. P. 23(a), (b)(2),
21 and (b)(3), defining the Class as requested herein, finding that Plaintiffs are proper
22 representatives of the Class requested herein, and appointing Plaintiffs' counsel as
23 Class Counsel;
24
25 **B.** Designate Plaintiffs as Class Representatives and designate the undersigned
26 counsel as lead Class Counsel;
27
28

- 1 **C.** Find that Defendants' acts described herein violate the Equal Credit Opportunity
2 Act, the Fair Housing Act, the Civil Rights Act of 1866, and the California Unfair
3 Competition Law;
4
5 **D.** Enter a declaratory judgment that the forgoing acts, policies, and practices of
6 Defendants violate 15 U.S.C. § 1691; and 42 U.S.C. § 3605;
7
8 **E.** Enter a permanent injunction enjoining Defendants from continuing to implement
9 and enforce the illegal conduct described herein and directing Defendants to take
10 all affirmative steps necessary to remedy the effects of that conduct and to prevent
11 additional instances of such conduct or similar conduct from occurring in the future;
12 **F.** Find that Defendants have engaged in a pattern and practice of racial discrimination
13 resulting in the harm to Plaintiffs and class members described above;
14 **G.** Award Plaintiffs and the members of the Class damages in an amount to be
15 determined by the Court;
16 **H.** Award Plaintiffs and the members of the Class pre- and post- judgment interest as
17 provided by law, and that such interest be awarded at the highest legal rate from
18 and after the date of service of this Complaint;
19 **I.** Award Plaintiffs and the members of the Class the costs of suit, including
20 reasonable attorneys' fees, as provided by law; and
21 **J.** Award Plaintiffs and the members of the Class any other and further relief as the
22 case may require and the Court may deem just and proper.
23
24
25

26 **VIII. JURY TRIAL DEMANDED**

27 Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil
28 Procedure, of all issues so triable.

Dated: June 10, 2022

Respectfully submitted,

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Attorneys for Plaintiffs and Others Similarly Situated

EXHIBIT I

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About Us

Over the past 35 years, Ellis George Cipollone O'Brien Annaguey LLP (formerly Browne George Ross O'Brien Annaguey & Ellis LLP) has successfully litigated and tried challenging cases nationwide, securing favorable settlements and substantial sums for clients.

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Education

- Howard University School of Law, J.D., *cum laude*, 1995
- California State University, Fullerton, B.A., 1990

Bar Admissions

- California

Dennis S. Ellis is based in the firm's Century City office, and his practice concentrates on consumer class actions, unfair competition (Section 17200), business torts, product liability defense, environmental law, and breach of contract actions. He has worked for a diverse group of clients, including major retail chains, petroleum, pharmaceutical, and manufacturing companies, and internationally-known celebrities. Mr. Ellis is the author of several articles that have appeared in various legal publications, including a law review article entitled "A Product Liability Claim By Any Other Name Remains A Product Liability Claim: California Courts Should Not Permit Plaintiffs To Recast A Product Liability Claim In The Terms Of Fraud," 25 Whittier L. Rev. 441 (2003). He also wrote a practitioner's treatise entitled *Enforcement of Judgments: A Practitioner's Guide to Recovery*, published by ALM Media LLC in July 2016.

Before studying law, Mr. Ellis was one of 18 individuals selected from a nationwide pool of over 350 applicants to work for the California State Assembly as a Jesse Marvin Unruh Assembly Fellow. After completing the year-long Fellowship program, he was hired as a legislative aide to Assemblywoman Carol Bentley. As Assemblywoman Bentley's chief legislative advisor, Mr. Ellis briefed the Assemblywoman on pending legislation and was responsible for drafting many of the bills she introduced.

Mr. Ellis graduated from California State University, Fullerton in 1990, where he was a scholarship student-athlete and starting offensive lineman on the Titan football team. He graduated *cum laude* from Howard University School of Law in 1995. While there, Mr. Ellis was first runner-up in the Charles H. Houston Moot Court Competition, a member of the National Moot Court Team, and a member of the *Howard Law Journal*.

Recent Representations

Mr. Ellis has successfully represented clients in these matters:

- Consumer Class Action Defense: Mr. Ellis has a thriving practice representing consumer packaged goods companies across the country. He has successfully defended such cases by obtaining motions to dismiss at the pleading stage and denial of motions for class certification.
- New World TMT Limited v. PrediWave Corporation, et al.*: Mr. Ellis was lead attorney in the case which resulted in what is believed to be the largest judgment ever obtained by a Chinese firm in a U.S. court. In New World, Mr. Ellis led a team of attorneys who successfully brought

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a motion for terminating sanctions against PrediWave Corporation, eight PrediWave-related companies, and their CEO, Jianping "Tony" Qu. In its order, the court struck all the defendants' answers and cross-claims, and ordered that default be entered against them and in favor of Mr. Ellis' client, New World. A default hearing to prove compensatory and punitive damages resulted in a total judgment in excess of \$2.8 billion.

- *Pacific Coin Management v. BR Telephony Partners, L.P., et al.*: Mr. Ellis was part of a trial team that obtained a \$97.2 million jury verdict on behalf of their client in this lawsuit involving claims of unfair competition and other related claims regarding the alleged failure to disclose material information in an investment solicitation.
- *Broadlink Communications, Inc. v. MRV Communications, Inc.*: Mr. Ellis was the lead trial lawyer in the Broadlink case, assisted only by a junior associate, where they represented iTouch Communications, Inc. ("iTouch"), a division of MRV Communications, Inc. ("MRV"), in a case of breach of contract for sale of goods. A collection agency brought the case in Sonoma County Superior Court on behalf of bankrupt Broadlink. After deliberating for three and a half hours, the jury returned a defense verdict on all counts in favor of Mr. Ellis' clients, iTouch and MRV.
- Mr. Ellis was the lead trial lawyer in a three-month long trial handling the opening, closing, and direct and cross-examination of all the major witnesses. This case involved a \$16 million lawsuit filed by a Santa Barbara-based preventative medical scanning company. The jury concluded that the company's demise was due to a downward industry trend in the full-body scanning market and its own poor management decisions, rather than the company's claims of malfunctioning equipment manufactured by Mr. Ellis' client, a major healthcare company.
- Confidential JAMS Arbitration: Mr. Ellis served as lead counsel for Claimant in an environmental case, where Claimant alleged Respondents failed to pay their agreed portion of response costs related to an enforcement action brought by the Regional Water Quality Control Board. At the conclusion of the arbitration, the panel of three retired judges ordered Respondents to pay their full portion of response costs in the amount of \$2,045,279.40 and an additional \$651,638.81 in prejudgment interest. The panel also found that Claimant was the prevailing party and entitled to attorneys' fees in excess of \$2,000,000.

Accolades and Recognitions

- Member, International Association of Defense Counsel
- Fellow, Litigation Counsel of America's Trial Lawyer Honorary Society
- Selected to the [Lawdragon "500 Leading Lawyers in America"](#) list

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- Recognized in the *Los Angeles Business Journal*'s "Leaders of Influence Minority Attorneys" special issue ([2016](#), [2022](#))
- Selected to the Southern California Super Lawyers list (2007-2022)
- John M. Langston Bar Association of Los Angeles; Legacy of Leadership Award (2016)
- Named "California Lawyer of the Year" by *California Lawyer* magazine (2006)
- Named as one of the "Top 20 Lawyers under 40" by the *Daily Journal* (2006)
- Included in "Who's Who in Black Los Angeles"

Professional and Community Involvement

- Former General Counsel and Member, Board of Directors, Zeitgeist Community Learning Center, a community-based after school program for students grades three through five, in South Central Los Angeles
- Member, Board of Visitors, Howard University School of Law

Practice Areas

- Advertising and Promotions Trade Secrets
- Mass Tort, Toxic Tort, and Environmental Litigation
- Life Sciences and Healthcare
- Financial Services Litigation
- Complex Litigation and Arbitration
- Class Actions
- Intellectual Property
- Environment and Energy Litigation

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Trent Copeland is a Partner at Ellis George Cipollone O'Brien Annaguey LLP. He began his career at a major multinational law firm and then as a solo practitioner specializing in both criminal and civil litigation. He is a nationally recognized attorney and has successfully defended hundreds of serious high stakes civil and criminal matters including several capital offenses. He is regarded as a go-to lawyer for high-profile matters, particularly where legal acumen, courtroom competence and intense media interest intertwine.

Education

- Dartmouth College, A.B.
- George Washington University Law School, J.D.

Bar Admissions

- California

Practice Areas

- Civil Litigation
- Employment Discrimination
- Entertainment
- Defamation
- First Amendment rights
- Criminal Defense
- Sexual Assault / Battery

Trent is the rare trial attorney who practices adeptly in both civil and criminal litigation. Among others, his list of clients have included prominent medical professionals such as Dr. Gordon Goei who faced criminal prosecution in a high-profile case related to his medical practice but was proven innocent and publicly vindicated following Trent's successful representation. Trent also successfully represented a Muslim college professor who had been wrongfully targeted by the FBI under one of the first uses of the Patriot Act against a U.S. citizen engaging in protected speech. After numerous proffers and an oral presentation by Trent, the Government withdrew its case against her and she was restored to her teaching position. Trent has also represented and provided legal counsel to numerous celebrities, including Jean Claude Van Damme, Matt LeBlanc, Tracey Edmonds, Shannen Doherty, TMZ Co-founder Jim Paratore and numerous other entertainment professionals. Recently, Trent also successfully handled a major dispute directly involving international music star Justin Bieber where he negotiated a substantial six-figure settlement of the claim.

With his colleague, Eric George, Trent took over the high-profile representation of Gary Franklin, who had been victimized by the criminal conduct of his former attorney, Michael Avenatti. Trent and Eric's representation of Mr. Franklin includes all matters associated with his civil interests in his well-documented role in the much-publicized NCAA basketball recruiting scandal.

Trent holds the distinction of being CBS News' first African-American national on-camera legal news analyst where he served in that capacity for eight years. In his role as CBS News on-camera legal news analyst, he provided expert legal analysis on dozens of legal cases, including the Scott Peterson murder trial, the Michael Jackson molestation trial and the Kobe Bryant sexual assault hearings. Trent has also provided legal news analysis for CNN, Fox News and MSNBC. Trent is currently an on-air legal analyst for legendary broadcaster Larry King's digital program Larry King Now where he provides both legal and political commentary on cases and issues of national and political interest. Larry King has publicly called Trent "one of the best attorneys and communicators in the country." Trent was also featured on Dr. Drew's national TV show as a "Life Changer" for his high-profile and successful work in the legal industry. Trent has

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been interviewed on-camera by Katie Couric, Dan Rather and CNN's Don Lemon, among others. He has been quoted in *People Magazine*, *NY Daily News*, and *US Magazine*.

Trent is featured regularly as one of "California's Top 100 Lawyers" by the national publication, *Best Attorneys of America*, and he has been regularly selected to the Southern California Super Lawyers list. Trent has spoken at various law enforcement conferences and symposiums, including lecturing for the Beverly Hills Police Department on effective courtroom presentations. Trent was also a keynote speaker at the inaugural opening of the Tom Mesereau Free Legal Clinic. Trent is a frequent speaker on high-profile litigation and the representation of "celebrity" clients.

Additionally, Trent was recently profiled by *Lawdragon* (April 2021) and has been repeatedly recognized by *Best Attorneys of America*.

Recent Representations

- Represents a leading global investment management firm as co-lead defense counsel in several multimillion dollar employment discrimination claims brought by C-suite level employees.
- Led the representation of a high-profile news anchor in obtaining a confidential multi-million dollar resolution of claims of discrimination against a major television network.
- Represented members of the family of the late Senator Robert F. Kennedy as Amicus Counsel in opposing the parole of assassin, Sirhan Sirhan.
- Represented a student in connection with the highly publicized college admissions cheating scandal.
- Led representation of a member of President's Coronavirus Task Force in connection with First Amendment issues related to his service as a Special Advisor to the President.
- Represented two prominent African-American journalists against major TV network in claims related to employment discrimination.
- Represented a Fox Television executive in an indictment filed by the United States Attorney's Office, Central District, into potential violations of the federal Anti-Kickback Statute. The case resolved with probation.
- Successfully represented an individual falsely accused of attempted murder in a high-profile case in San Bernardino, negotiating a dismissal of all charges on the eve of preliminary hearing. The case garnered local media coverage.
- Represented an attorney being investigated for potential participation in a major narcotics distribution ring. The investigation was closed by the Department of Justice with no charges being brought against the attorney.

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Education

- Harvard Law School, J.D., 2007
- Pomona College, B.A., Public Policy Analysis/Politics, *magna cum laude*, 2003

Bar Admissions

- California

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Noah Helpern is a Partner in Ellis George Cipollone O'Brien Annaguey LLP's Downtown Los Angeles office. His practice focuses on complex commercial litigation, with an emphasis on IP/entertainment disputes, class actions, and structured finance litigation. He also has extensive experience in alternative dispute resolution and served as a teaching assistant for the Harvard Negotiation Institute (formerly Program of Instruction for Lawyers) at Harvard Law School's Program on Negotiation. From 2013 through 2017, Noah was selected to the Southern California Super Lawyers "Rising Stars" list.

Practice Areas

- Complex Commercial Litigation
- Class Actions
- IP/Entertainment

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Education

- New York University School of Law, J.D.
- Osgoode Hall Law School, LL.B.
- Queen's University at Kingston, B.A. (Hons.), with distinction

Bar Admissions

- California
- District of Columbia
- Ontario, Canada

Court Admissions

- U.S. District Court for the Central District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. Court of Appeals for the Ninth Circuit

Ryan Q. Keech is a Partner in the Los Angeles office of Ellis George Cipollone O'Brien Annaguey LLP, where he advises and represents companies and individuals in high-stakes entertainment and business disputes. Mr. Keech has represented U.S. and foreign clients in trial and appellate litigation and arbitration in a wide variety of industries, including feature and television production, general media and entertainment, toys and other consumer products, cosmetics, financial services, insurance, social media and mobile technology. He has particularly significant experience handling disputes involving copyright, trademark, trade dress, trade secrets, business torts, complex contract interpretation, unfair competition, false advertising and FTC claims, as well as with collective bargaining, labor relations and initial and residual compensation issues in the theatrical motion picture and television industry.

Prior to joining the firm, Mr. Keech most recently served for more than two years as in-house staff counsel for the Alliance of Motion Picture and Television Producers (AMPTP), where he represented the major studios, broadcast television networks and certain basic cable and pay television services in labor negotiations and related matters in the United States and Canada. Before serving as staff counsel to the AMPTP, Mr. Keech was an associate for five years litigating cases at both the trial and appellate level in the Los Angeles office of Quinn Emanuel Urquhart & Sullivan, LLP.

Mr. Keech received his J.D. from the New York University School of Law, where he served as a Notes Editor for the *New York University Journal of Legislation and Public Policy*. Mr. Keech also received an LL.B. from Osgoode Hall Law School, where he was an editor of the *Osgoode Hall Law Journal* and received top academic prizes in Criminal Law, Civil Procedure and Administrative Law. Mr. Keech earned his B.A. in Political Studies and Music, with distinction, from Queen's University at Kingston.

Notable Representations

- Obtained preliminary injunction in the Central District of California halting all advertising and sales of competing product based on claims of trademark, trade dress and copyright infringement. Prevailed on subsequent appeal to Ninth Circuit Court of Appeals. *Am. Rena Int'l Corp., et al v. Sis-Joyce Int'l Co., Ltd., et al*, 2012 WL 12538385 (C.D. Cal. Oct. 15, 2012), *aff'd*, 534 Fed. Appx. 633 (9th Cir. Jul. 24, 2013).
- Obtained case-ending terminating sanctions prior to trial, including a seven-figure judgment with a full award of damages, over \$1 million in attorneys' fees and a permanent injunction, in a trademark, trade dress and RICO conspiracy case in the Central District of California.

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- Obtained summary judgment completely defeating eight-figure contract and tort claims brought by former independent contractor in Los Angeles Superior Court.
- Part of trial team that obtained seven-figure judgment for client on trademark and trade dress counterclaims at ensuing bench trial.
- Part of trial team that obtained full defense verdict at jury trial in the Central District of California on behalf of producers, writer, director and associated production company for intellectual property claims related to the development and production of a major theatrical motion picture.
- Successfully defended animation studio against claims of copyright infringement related to a major theatrical motion picture.
- Successfully defended owner and operators of major social media application against claims of trademark infringement.
- Successfully represented high-profile non-profit motion picture industry organization in enforcing intellectual property and related restrictions on the sale of industry award statuettes by award recipients.
- Part of industry negotiating team that successfully represented the major motion picture and television studios, network production entities and independent production companies in numerous labor negotiations and related matters.

Practice Areas

- Complex Business
- Entertainment
- Copyright/Trademark
- Insurance

Recognitions

- Selected to the Southern California Rising Stars list, 2021–2022

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Joseph N. Kiefer is Senior Counsel in the New York office of Ellis George Cipollone O'Brien Annaguey LLP. Joe's practice focuses primarily on plaintiff-side antitrust cases, and Joe has a strong history of achieving successful outcomes for businesses injured by collusive schemes. Joe has been a part of many of the most notable and successful antitrust cases from the last few years, including cases involving complex financial products, intricate and concealed agreements, and groundbreaking damages calculations. Joe's experience covers antitrust cases not only in the financial sector but also in the health care, commodities, and transportation sectors, among others. In addition to antitrust cases, Joe has significant experience in a wide variety of cases, ranging from high-stakes defamation cases, to licensing disputes between professional sports teams to real estate disputes concerning intricate contract provisions.

Prior to joining the firm, Joe was a senior associate at the New York office of Quinn, Emanuel, Urquhart & Sullivan, LLP. Before that, Joe clerked for two years for Judge Thomas W. Thrash of the Northern District of Georgia where he had responsibility for numerous jury and bench trials and resolved dispositive motions involving topics such as patents, trade secrets, antitrust, non-competes, and voting rights. While attending law school, Joseph served as an intern to the Honorable Casey M. Rodgers, U.S. District Judge at the U.S. District Court for the Northern District of Florida and completed an internship in the chamber of Judge Hugh P. Thompson at the Supreme Court for the State of Georgia.

Clerkships

- U.S. District Court for the Northern District of Georgia for the Honorable Thomas W. Thrash, U.S. District Judge (current Chief Judge of the District)

Education

- Emory University School of Law, J.D.
Member, Order of the Coif;
Managing Editor, *Emory Law Journal*

Bar Admissions

- Georgia
- New York

Court Admissions

- U.S. District Court for the Southern District of New York

ELLIS GEORGE CIPOLLONE

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Milin Chun is Senior Counsel at Ellis George Cipollone O'Brien Annaguey LLP. Her practice focuses on complex commercial litigation, including consumer class actions and general business disputes, as well as defamation claims.

Prior to joining the firm, Ms. Chun was a senior associate at Boucher LLP, where her practice focused on civil rights, class action prosecution, mass tort litigation, and terrorism-related cases. Ms. Chun also previously practiced at a litigation boutique in Baltimore, Maryland where she focused on federal white-collar criminal defense and appellate matters. She represented clients in criminal investigations, including the Hobbs Act, Contraband Cigarette Trafficking Act, False Claims Act, securities fraud, money laundering, wire fraud, and tax evasion.

Ms. Chun earned her B.A. in Political Science from the University of California, San Diego. She then obtained her Juris Doctor degree from the University of Maryland, Baltimore, where she served as the Managing Editor of the *University of Maryland Law Journal of Race, Religion, Gender, and Class*. Following law school, Ms. Chun clerked for the Honorable Gale E. Rasin in the Circuit Court for Baltimore City.

Ms. Chun previously served on the Editorial Advisory Board for the *Daily Record*, Maryland's business and legal newspaper.

Ms. Chun was selected to the Maryland Super Lawyers "Rising Stars" list from 2013 through 2015 and to the Southern California Super Lawyers "Rising Stars" list from 2016 through 2017.

Representative Matters

- Successfully drafted appellate brief in *Agurs v. State of Maryland*, 415 Md. 62 (2010)
- Successfully drafted and argued *Aluya, et al. v. Management & Training Corp.*, appeal no. 15-16581 (December 22, 2016), in the United States Court of Appeals for the Ninth Circuit
- Represented plaintiff in *Garza v. County of Los Angeles, et al.* and obtained \$5.9 million settlement
- Represented victims of terrorist attacks in Kenya and Tanzania against the Republic of Sudan and the Islamic Republic of Iran
- Represented the former CEO of a public company charged with securities/insider trading/tax fraud in a nine-month federal court jury trial

Education

- University of Maryland, J.D., 2007
- University of California, San Diego, B.A., 2003

Bar Admissions

- California
- District of Columbia
- Maryland

Court Admissions

- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the District of Maryland
- U.S. District Court for the District of Nebraska

ELLIS GEORGE CIPOLLONE

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- Complex Business Litigation
- Complex Commercial Litigation
- Class Action
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Stefan Bogdanovich is an Associate in Ellis George Cipollone O'Brien Annaguey LLP's Century City office. Stefan's practice includes a range of commercial disputes, including unfair competition and the theft and misuse of intellectual property. His practice also includes constitutional litigation.

Stefan secured significant victories for clients throughout the beginning and end of disputes, from drafting successful demand letters to enforcing final judgments. For example, he obtained a preliminary (and later, permanent) injunction stopping an online false advertising campaign and requiring corrective disclosures by a client's competitor, over the competitor's First Amendment objections. In another case, he enforced an international interim arbitration award against a well-known musical recording artist's company. In his pro bono practice, Stefan negotiated and obtained a favorable settlement from a City, which vindicated his client's Fourth Amendment rights and helped his client get back on his feet.

Stefan earned his J.D. at the University of Southern California, where he was selected to be on the Hale Moot Court Honors Program, the Willem C. Vis International Commercial Arbitration Moot, and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

Education

- University of Southern California, Gould School of Law, J.D.
- University of California, Irvine, B.A.

Bar Admissions

- California

Court Admissions

- U.S. District Court for the Central District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California

EXHIBIT C

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Attorneys for Plaintiffs Aaron Braxton,
Gia Gray, Bryan Brown, Paul Martin, on
behalf of themselves and all others
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON BRAXTON, GIA GRAY,
BRYAN BROWN AND PAUL
MARTIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a
Delaware corporation; WELLS FARGO
HOME MORTGAGE, INC., a
Delaware corporation; WELLS FARGO
& CO., a Delaware corporation,

Case No. 4:22-cv-01748-JD

Honorable James Donato

**DECLARATION OF JASON M.
FRANK IN SUPPORT OF
PLAINTIFFS AARON BRAXTON,
ET AL.'S MOTION FOR
APPOINTMENT OF INTERIM
COUNSEL FOR A PUTATIVE
REFINANCING CLASS**

DECLARATION OF JASON M. FRANK

I, Jason M. Frank, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court, all the courts of the State of California, and other courts. I am a partner at Frank Sims & Stolper LLP and represent the above-referenced Plaintiffs in this action against Wells Fargo Bank, N.A. I have personal knowledge of the facts set forth below, unless stated on information and belief, and if called as a witness, I would testify competently thereto.

QUALIFICATIONS AS INTERIM COUNSEL

2. In May 2016, I, along with my partners Scott Sims and Andrew Stolper, formed the law firm, Frank Sims & Stolper LLP (“FSS”). FSS is a litigation firm that specializes in handling complex commercial litigation, consumer and employment class actions and white-collar criminal defense matters.

3. I was previously an equity partner at Paul Hasting Janofsky & Walker, LLP (“Paul Hastings”), a global law firm based in Los Angeles, California. At Paul Hastings, I was one of the leaders of the firm’s global class action practice group. I received my J.D. degree from the University of Michigan in 1997 and my B.A. from the University of Michigan in 1994. I have been a member of the editorial board for Lexis/Nexis legal publications since 1999. I have also served as a member of the Board of Governors for the Association of Business Trial Lawyers (“ABTL”), Los Angeles Chapter. I have been repeatedly included in Los Angeles Magazine’s annual list of “Super Lawyers” in Southern California.

4. My partner, Andrew D. Stolper, was formerly an Assistant United States Attorney (“AUSA”) for the Central District of California and an associate at Irell & Manella LLP. He was formerly in charge of white-collar prosecutions in Orange County and a member of the Enron Taskforce. For his service, Mr. Stolper was awarded the Attorney General Award for Exceptional Service, the highest honor

1 bestowed by the Department of Justice to its prosecutors. He graduated Order of the
2 Coif from the University of Southern California Law School in 1999 and received his
3 B.A. degree from The George Washington University in 1996.

4 5. My partner, Scott H. Sims, was formerly a non-equity partner at a
5 litigation firm in Newport Beach, California and an associate at Paul Hastings. Mr.
6 Sims obtained his J.D. degree from Harvard Law School in 2004, and his B.A.,
7 summa cum laude, from Southern Methodist University in 2001. Mr. Sims has been
8 repeatedly named a Southern California Rising Star and Super Lawyer by Los
9 Angeles Magazine.

10 6. In my practice, I specialize in representing both plaintiffs and defendants
11 in complex litigation and consumer class actions. In my class action defense practice,
12 I represent fortune 500 companies, such as AT&T, and major private corporations,
13 such as L.A. Fitness. In my plaintiff practice, I have obtained verdicts and settlements
14 totaling over a \$750 million in the last ten years.

15 7. A representative sample of our firm's recent class action matters include
16 the following:

17 a. **The Wells Fargo GAP Class Action.** Our firm served as the lead
18 counsel representing consumers in a nationwide class action concerning Wells
19 Fargo's failure to issue GAP refunds after the early payoff of a finance agreement (the
20 "Wells Fargo matter"). *See Herrera v. Wells Fargo*, CDCA Case No. 8:18-cv-00332.
21 In November 2021, the United States District Court for the Central District of
22 California approved a nationwide class action settlement which provided for
23 approximately \$500 million in benefits to the class and Wells Fargo's customers,
24 including a \$45 million settlement fund, a separate payment of over \$33.3 million to
25 the Statutory Subclass, and over \$417 million in future refunds over a minimum four-
26 year period. Wells Fargo was represented in *Herrera* by David Powell and Alicia
27 Baiardo, the same McGuire Woods LLP lawyers representing Wells Fargo here. We
28

1 enjoy a productive and respectful working relationship with Mr. Powell and Ms.
2 Baiardo.

3 **b. The Mercedes-Benz SUV Class Action.** Our firm served as the
4 lead counsel representing a nationwide class of consumers against Mercedes-Benz for
5 failing to disclose a design defect in its seat heaters (in certain SUV models) that could
6 cause the seat heaters to overheat, smoke and burn a hole through the seat while the
7 driver was operating the vehicle. *See* 8:14-cv-02011. The United States District
8 Court for the Central District of California approved a nationwide class action
9 settlement in that matter with a total value of over \$85 million.

10 **c. The Hewlett-Packard Late Commission Class Action.** Our
11 firm served as the lead lawyers representing a class of California employees against
12 Hewlett-Packard (“HP”) for failing to pay sales commissions on a timely basis in
13 accordance with California law, including alleged violations of California Labor Code
14 §§ 201, 202 and 203. *See Wall v. Hewlett-Packard*, Orange County Superior Court
15 Case No. 30-2012-00537897. The California Superior Court, County of Orange
16 granted class certification over the opposition of HP. After nearly a decade of
17 litigation, the case settled a few weeks before trial. The settlement included a \$25
18 million settlement fund, \$75 million in technological investments to ensure the timely
19 processing of sales commissions and a multi-million-dollar PAGA penalty to the State
20 of California.

21 **d. The Supplemental Income Trust Fund ERISA Class Action.**
22 Our firm served as the lead counsel in a nationwide ERISA class action involving one
23 of the largest multi-employer 401(k) plans in the United States. *See Ybarra v. Board*
24 *of Trustees of Supplemental Income Trust Fund*, CDCA Case No. 8:17-cv-2091. This
25 was the first “excessive fee” case brought against a multi-employer 401(k) plan in the
26 nation. The United States District Court for the Central District of California is Court
27 approved a nationwide class action settlement in that matter for the full policy limits
28

of \$8.75 million, along with corrective measures to prevent excessive fees in the future.

e. **The Quorn Foods False Advertising Class Action.** Our firm served as the lead counsel representing a nationwide class of consumers against Quorn Foods, Inc., a manufacturer of vegetarian and vegan food products. *See Birbower v. Quorn Foods*, CDCA Case No. 2:16-cv-01346. The case involved claims that Quorn misleadingly advertised the main ingredient in its products (mycoprotein) as being “like a mushroom, truffle or morel” when the ingredient was actually fermented mold. The case was filed after a child with severe mold allergies died after consuming the product. The case settled with Quorn agreeing to provide 4 years-worth of full refunds to consumers and to prominently disclose on its packaging that Quorn products contain mold. The Settlement was approved by the United States District Court for the Central District of California

f. **The Arthur J. Gallagher & Co. Misclassification Class Action.** Our firm served as the lead counsel in a California class action against Gallagher for misclassifying its Client Service Managers as exempt from federal and state overtime laws. *See CDCA Case No. 2:18-cv-06227*. The case settled for \$8 million, along with a PAGA penalty to the State of California. The Settlement was approved by the United States District Court for the Central District of California

g. **The Toyota GAP Class Action:** Our firm serves as the lead class counsel representing consumers in a nationwide class action concerning Toyota Motor Credit Corporation’s failure to issue GAP refunds after the early payoff of a finance agreement. *See Martin v. Toyota Motor Credit Corp.*, CDCA Case No. 2:20-cv-10518. In July 2022, the United States District Court for the Central District of California Court granted preliminary approval of a nationwide class action settlement that, if final approval is granted, will be worth well in excess of \$300 million. The final approval hearing is set for October 2022.

h. **The Anthony Pellicano Wiretapping Litigation.** Our firm served as the lead counsel representing AT&T in a putative class action and 18 individual lawsuits in state and federal court concerning the wiretapping scheme perpetrated by convicted private investigator Anthony Pellicano. *See In re: Pellicano Cases*, Los Angeles Superior Court Case No. 316 318 (Lead Case). On behalf of AT&T, we defeated 12 of the individual lawsuits via dispositive motions and secured favorable settlements in the proposed class action and remaining individual lawsuits.

8. FSS, along with our co-counsel at Ellis George Cipollone O'Brien Annaguey LLP ("EGC") are committed to vigorously prosecuting the claims in this action on behalf of the Putative Refinancing Class.¹ We have successfully litigated prior cases together and have the financial resources and personnel necessary to prosecute this case on behalf of the Putative Refinancing Class.

9. I am not aware of any conflicts of interests between FSS and EGC, on the one hand, and the Putative Refinancing Class, on the other.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Irvine, California on July 28, 2022.

/s/ Jason M. Frank

Jason M. Frank

¹ As defined in Plaintiffs' Motion.

EXHIBIT D

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<i>Southwest Marine, Inc. v. Triple A Machine Shop, Inc.</i> , 720 F. Supp. 805 (N.D. Cal. 1989)	2
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

A motion for consolidation should only be granted when it will promote judicial economy without impeding justice and the interests of the parties. *Campbell v. PricewaterhouseCoopers*, No. CIV S-06-2376LKK/GGH, 2008 WL 3836972, at *2 (E.D. Cal. Aug. 14, 2008) (“considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial”). It is the district court’s responsibility to ensure that the parties are not prejudiced by consolidation. *El Bannan v. Yonts*, No. 5:06-cv-173-R, 2007 WL 1199432, at *1 (W.D. Ky. April 20, 2007). Through its motion to consolidate, Wells Fargo seeks to revisit (and reverse) the Court’s prior determination that the *Braxton* case—which is specifically about discrimination against Black homeowners in the mortgage refinancing process—should not be subsumed by the *Williams* case. As this will unquestionably prejudice the representative plaintiffs and putative class in the *Braxton* case by distracting the Court from the precise issues facing their refinancing claims, this motion to consolidate should be denied.

Indeed, the instant motion, like the (denied) motion to dismiss, seeks to strategically dilute *Braxton*’s narrow refinancing claims into broader residential credit claims that, as the *Braxton* plaintiffs have already demonstrated, would potentially obscure Wells Fargo’s established and extensive discrimination against Black homeowners with respect to refinancing. Unlike *Williams* and other cases pending before this Court, *Braxton* is specifically and *solely* about discrimination against Black homeowners in the mortgage refinancing process. Combining the *Braxton* plaintiffs with other groups of plaintiffs could hurt the *Braxton* plaintiffs’ ability to certify their class, which benefits Wells Fargo. Wells Fargo would prefer to defend against a large and varied class that involves all minorities and all aspects of lending in part because such a class could have issues demonstrating commonality and typicality, among other factors. But the *Braxton* plaintiffs filed on behalf of only Black homeowners discriminated against in the refinancing in part because of the ease of certifying their class, and they would be prejudiced if they are denied that opportunity.

Wells Fargo contends that “[w]hile the *Braxton* . . . plaintiffs may argue that their focus on refinancing renders the necessary discovery in their cases unique, that is simply not true [because]

1 *Williams and Ebo* do include refinancing.” Defendants Motion to Consolidate, Case No. 3:22-cv-
 2 00990-JD, Dkt. 63 (“Mot.”), at 9. In other words, Wells Fargo’s position is that the *Braxton* case
 3 is essentially unnecessary because there is another case—with different plaintiffs, different
 4 lawyers, and different facts—that touches on refinancing. Wells Fargo, however, is mistaken;
 5 similarity in the legal issues is not the determinative factor in a motion to consolidate. *See* Mot. 5
 6 (“a single, common issue of law or fact is all the rule requires”); *see, e.g., Wright v. United States*,
 7 1993 WL 313040, at *1 (N.D. Cal. 1993) (denying a motion for consolidation despite common
 8 legal issues); *Dodaro v. Standard Pac. Corp.*, No. EDCV 09-1666-VAP (OPx), 2009 WL
 9 10673229, at *3 (C.D. Cal. Nov. 16, 2009) (“The existence of common issues, while a prerequisite
 10 to consolidation, does not compel consolidation.”).

11 Despite any common issues, consolidation is inappropriate when, as here, concerns of
 12 “delay, confusion, and prejudice” outweigh “the interest of judicial convenience.” *Southwest*
 13 *Marine, Inc. v. Triple A Machine Shop, Inc.*, 720 F. Supp. 805, 807 (N.D. Cal. 1989). Overall,
 14 “considerations of convenience and economy must yield to a paramount concern for a fair and
 15 impartial trial.” *Campbell*, 2008 WL 3836972, at *3 (citing *Johnson v. Celotex Corp.*, 899 F.2d
 16 1281, 1484 (2d Cir.1990)). Therefore, whatever (disputed) convenience and efficiencies Wells
 17 Fargo claims do not “override the Plaintiffs’ autonomy in mastering their own complaints.”
 18 *Anderson Living Tr. v. WPX Energy Prod., LLC*, 297 F.R.D. 622, 631 (D.N.M. 2014). This is
 19 especially true here, where the efficiencies Wells Fargo purports to urge can be achieved without
 20 formal consolidation. *Campbell*, 2008 WL 3836972, at *2-3 (“many of the efficiency gains
 21 sought to be achieved by consolidation can also be achieved without consolidation.”). Wells
 22 Fargo’s complaints about litigating individually the separate cases facing it due to its vast
 23 discriminatory lending practices ring hollow.

24 Wells Fargo is in any event wrong that the cases share a common question of fact. That
 25 supposed common question—whether “Wells Fargo intentionally and purposefully discriminated
 26 against plaintiffs because of race in violation of state and federal law when they applied for home
 27 mortgage loans and loan modifications,” Mot. 6—is not a “common question” at all. This Court
 28 has already ruled that the refinancing cases (like *Braxton*) and the broader lending cases (like

1 *Williams*) are not sufficiently similar to warrant subsuming the narrower refinancing cases into
 2 broader mortgage lending cases. Ignoring this prior determination, Wells Fargo contends that the
 3 refinancing plaintiffs do not need to prosecute their own case because “the application process for
 4 refinancing applicants is not any different.” Mot. 9. This is not only an untested statement of fact,
 5 but is contrary to the *Braxton* plaintiffs’ investigation of Wells Fargo’s practices, which suggests
 6 that Wells Fargo’s consideration of refinancing applications is materially different from its
 7 consideration of other residential lending applications.

8 In reality, the issues are *not* common across all of the cases Wells Fargo seeks to
 9 consolidate. Even outside of the origination/refinancing distinction (which itself is significant),
 10 the class definitions are not aligned. Several of the classes in the matters Wells Fargo seeks to
 11 consolidate include all racial minorities, while several include only Black Americans. Wells
 12 Fargo fails to contend with this important distinction and simply states that the allegations on
 13 behalf of non-Black racial minorities are too thin to establish well-pleaded claims and that
 14 therefore those portions of the class definitions disappear. *See* Mot. 11 (“those complaints make
 15 no substantive allegations regarding any “non-Black applicants”). Wells Fargo cannot
 16 manufacture commonality by making conclusory and self-serving assertions, in this case claiming
 17 that the class claims explicitly made on behalf of all racial minorities are *not really* on behalf of all
 18 racial minorities.

19 The Court should deny Wells Fargo’s motion to consolidate cases, grant the *Braxton*
 20 class’s parallel motion for appointment of lead counsel, and allow the refinance-only Black
 21 homeowner class to proceed. *See* Dkt. 45.¹

22 **II. BACKGROUND**

23 **A. Procedural History**

24 **1. The *Braxton* Case Filing**

25 On March 18, 2022, Plaintiff Aaron Braxton and the *Braxton* firms (Ellis George
 26 Cipollone O’Brien Annagney LLP and Frank, Sims, & Stolper LLP) filed the first putative class
 27

28 ¹ Unless otherwise indicated, docket references herein refer to docket entries in *Braxton v. Wells Fargo*, Case No. 4:22-cv-01748.

1 action against Wells Fargo on behalf of Black homeowners who had submitted refinance
 2 applications to Wells Fargo and were harmed by Wells Fargo's race-based discrimination. Dkt. 1.
 3 Subsequently, the *Braxton* plaintiffs filed a First Amended Complaint providing a detailed account
 4 of Wells Fargo's refinancing application process, its increased reliance on algorithms, and its
 5 CORE automated underwriting system. Dkt. 14 ¶¶ 70-78. The *Braxton* allegations demonstrate
 6 that Wells Fargo's automated underwriting system was infected with explicit and implicit racial
 7 signals (so-called "overlays") that had, as their proximate and likely result, the disparate impact
 8 reflected in the statistical analyses discussed in the FAC. *Id.* at ¶¶ 79-91. The *Braxton* allegations
 9 also include facts learned from interviews with confidential informants describing Wells Fargo's
 10 failure to control for discriminatory practices. *Id.* at ¶¶ 82, 91, 101, 103-05.

11 **2. The Other Actions**

12 Wells Fargo seeks to combine the *Braxton* action with five additional putative class actions
 13 pending in this District: (1) *Williams v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-0090-JD; (2)
 14 *Pope v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-01793-JD; (3) *Thomas v. Wells Fargo Bank,*
 15 *N.A.*, case no. 3:22-cv-01931-CRB; (4) *Ebo v. Wells Fargo Bank, N.A.*, case no. 3:22-cv-02535-
 16 JD; and (5) *Perkins, et al. v. Wells Fargo, N.A.*, case no. 3:22-cv-03455-CRB.² The Court has
 17 already related all six of these pending actions.

18 The *Williams* case was originally filed on February 17, 2022, on behalf of a broad class of
 19 African Americans who applied for residential real estate loans. The initial *Williams* complaint
 20 made no allegations about refinancing. After the *Braxton* case was filed, the *Williams* plaintiffs
 21 amended their complaint to include allegations about refinancing but, unlike *Braxton*, the *Williams*
 22 plaintiffs continued to seek to represent a class of all African Americans discriminated against
 23 with respect to *all* residential real estate loan applications.

24 As to the four other pending actions, the *Pope* and *Thomas* actions were filed subsequent
 25 to the *Braxton* action and largely repeated the *Braxton* allegations. The proposed classes in *Pope*

26
 27 ² Wells Fargo states in its motion that it has not been served in the *Pope* or *Thomas* actions and
 28 Wells Fargo will move to consolidate those actions with *Braxton* at the appropriate time. Mot. 1,
 n.2. The *Braxton* plaintiffs, for the reasons set forth in this opposition, also oppose incorporating
 those cases into the *Braxton* case.

1 and *Thomas*, while limited to discrimination in refinancing, differ from the *Braxton* class. *Pope*
 2 and *Thomas* seek to represent a class of “all first and second lien Wells Fargo *minority* [not limited
 3 to Black] mortgage refinance applicants ... whose refinancing applications were discriminatorily
 4 denied.” Case No. 4:22-cv-01793, ¶ 34; Case No. 3:22-cv-01931, ¶ 35 (emphasis added).

5 The *Ebo* and *Perkins* plaintiffs, like the *Williams* plaintiffs, seek to represent classes of
 6 applicants discriminated against with respect to mortgage loans as well as refinancing.
 7 *Ebo* proposes a class of “[a]ll Black Americans [] who submitted applications to obtain or
 8 refinance a mortgage loan with respect to residential real property” and suffered from
 9 discrimination. Case No. 3:22-cv-02535, ¶ 50. *Perkins* proposes a class of all minority applicants
 10 who suffered discrimination in financing or refinancing: “[a]ll Black persons, as well as other
 11 racial minorities [who] submitted, or attempted to submit, an application to finance or refinance
 12 their home mortgage.” Case No. 3:22-cv-03455, ¶ 56.

13 On July 28, 2022, the *Braxton* plaintiffs filed a motion for appointment of interim counsel
 14 for a putative refinancing class. Dkt. 45. As stated in that motion, *Braxton* was the first filed case
 15 on behalf of a putative class of Black homeowners discriminated against in the refinancing
 16 process, and the *Braxton* firms have already performed an extensive investigation relating to that
 17 specific class, have the experience and resources necessary to prosecute the case on behalf of
 18 Black homeowners, and will be prejudiced if lumped into a broader class of origination plaintiffs
 19 and/or non-Black applicants. Dkt. 45 at 1. The *Braxton* firms do not seek to be appointed counsel
 20 for prospective borrowers harmed outside the refinancing process and do not seek to be appointed
 21 counsel for non-Black homeowners. *Id.*

22 3. The Denied Motion to Dismiss

23 On June 13, 2022, Wells Fargo moved to dismiss the *Braxton* complaint under the first-
 24 filed rule because, according to Wells Fargo, the narrow *Braxton* refinancing class was subsumed
 25 by the broader *Williams* class. Dkt. 39. The *Braxton* plaintiffs opposed, and on July 19, 2022, the
 26 Court denied Wells Fargo’s motion to dismiss, explaining that

27 [t]he *Williams* action involves a proposed class of African American
 28 applicants who applied for, received, or maintained credit from Wells
 Fargo related to residential real estate, while the *Braxton* action

1 involves a proposed class of African American homeowners who
 2 submitted applications to refinance their home mortgages. **The cases**
 3 **are sufficiently similar for purposes of relation under the**
District’s local rules, but not so similar that *Braxton* is subsumed
in *Williams*.

4 Dkt. 44 (emphasis added).

5 **B. Factual Development by the *Braxton* Plaintiffs**

6 The *Braxton* plaintiffs intentionally brought their case *only* on behalf of Black
 7 homeowners who sought to refinance existing loans through Wells Fargo. The *Braxton* plaintiffs’
 8 continuing development of their case has only cemented their position that their class was
 9 uniquely affected by Wells Fargo’s discriminatory practices. The facts reflected in the *Braxton*
 10 First Amended Complaint demonstrate that the *Braxton* plaintiffs are already pursuing their claims
 11 on a faster timeline than remaining cases Wells Fargo seeks to combine with *Braxton*.

12 The *Braxton* plaintiffs, in their First Amended Complaint, explain Wells Fargo’s COVID
 13 19-era refinancing application process in detail, beginning with Wells Fargo’s steps gathering
 14 geographic, financial, and demographic data into Wells Fargo’s Form 1003 through a platform
 15 developed by Blend Labs, including details about specific in-person efforts to gather information
 16 on applicants that could identify them as Black homeowners. Dkt. 14, ¶¶ 70-77. Next, the
 17 *Braxton* plaintiffs explain, the information that has been gathered, including the data reflecting
 18 racial judgments, is inputted into Wells Fargo’s “CORE” automated underwriting system. *Id.* ¶
 19 78. According to the confidential informants the *Braxton* plaintiffs spoke to, CORE then classifies
 20 applicants into four categories, two of which automatically approved the loan, one of which
 21 referred the application to manual underwriting, and one of which automatically denied the
 22 application. *Id.* Black refinancing applicants were consistently relegated to the latter categories.
 23 *Id.* Further, again according to confidential informants, Wells Fargo severely understaffed the
 24 underwriting departments designed to flag potentially discriminatory outcomes, even going so far
 25 as to announce internally a decision to increasingly rely on the automated underwriting system.
 26 *Id.* ¶ 82.

27 Underlying that automated underwriting system, the *Braxton* plaintiffs’ investigation
 28 shows, were “overlays” that served to single-out refinancing applications from Black

homeowners. *Id.* ¶¶ 83-91. These overlays included geographic indicators, used to identify borrowers with property in Black-majority neighborhoods and classify them as lending risks, *id.* ¶ 84; post-closing liquidity requirements, which Wells Fargo dramatically increased during the pandemic knowing that Black Americans typically hold less than one-third the liquid assets as White Americans, *id.* ¶¶ 85-86; racially biased appraisals, which Wells Fargo plugged into its automated underwriting system without making any adjustment for the well-known disparity between the appraisal values of Black-owned properties as compared to equivalent White-owned properties, *id.* ¶¶ 89-90; and increased FICO requirements which, according to a confidential informant, Wells Fargo moved its minimum requirement from 600 to 620, removing four times as many Black applicants as White applicants from consideration. *Id.* ¶ 91. The *Braxton* First Amended Complaint also detailed the pernicious demographic indicators overlayed into the Wells Fargo algorithm. The overlays use Bayesian Improved Surname Geocoding and other advanced statistical measures to estimate the likelihood that an individual is a Black American given their surname and location. The First Amended Complaint relays information from responsible employees at Wells Fargo, even listing the specific equations involved. *Id.* ¶¶ 87-88.

Finally, the *Braxton* First Amended Complaint explains how these practices at Wells Fargo led to discriminatory results against Black homeowners in the refinancing process, noting that the underwriters with supposed oversight of the process were systematically disincentivized to check the results of the automatic system, despite Wells Fargo's knowledge of discriminatory outcomes. *Id.* ¶¶ 100-05. Then the complaint reveals the extent of the impact on Black homeowners as seen through public statistics. *Id.* ¶¶ 106-19.

The *Williams*, *Pope*, *Thomas*, *Ebo* and *Perkins* complaints do not contain the same detailed factual allegations or support. *Williams* only mentions "redlining" and does not describe the refinancing application process, does not address the automated underwriting system, does not mention let alone explain any overlays, and does not address underwriting staffing. *Pope* and *Thomas* also only contain references to "redlining" and provide no explanation of Wells Fargo's underlying practices. *Ebo* does not address or elaborate on Wells Fargo's automated underwriting system or its discriminatory overlays. *Perkins* states that Wells Fargo's machine learning

processes are responsible for Wells Fargo’s discriminatory outcomes (repeating many of the allegations made in the original *Braxton* complaint), but it does not detail the information incorporated into the algorithm aside from an applicant’s geographic location. There are no allegations in *Williams, Pope, Thomas, Ebo, or Perkins* reflecting information gleaned from confidential informants.

III. LEGAL STANDARD ON A MOTION TO CONSOLIDATE

Courts have ample discretion to decline to consolidate cases before them, even cases that have some common issues of fact and law. *Campbell*, 2008 WL 3836972, at *2 (E.D. Cal. Aug. 14, 2008). A party moving for consolidation has the burden of “establishing that the judicial economy and convenience benefits of consolidation outweigh any prejudice that would result from consolidation.” *Cook v. AT&T Mobility, LLC*, No. CV10-8870 R (OPx), 2011 WL 13217794, at *1 (C.D. Cal. Jan. 7, 2011). When assessing a consolidation motion, “considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial.”

Campbell, 2008 WL 3836972, at *3 (citing *Johnson*, 899 F.2d at 1484). Thus,

[t]he critical question [is] whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Morgan v. Napolitano, No. CIV. S-09-2649 LKK, 2012 WL 4755034, at *2 (E.D. Cal. Oct. 4, 2012).

Given the concerns of avoiding prejudice and ensuring fairness, “the existence of common issues, while a prerequisite to consolidation, does not compel consolidation.” *Dodaro*, 2009 WL 10673229, at *3 (citing *Dusky v. Bellasaire Invs.*, No. SACV07-874 DOC (ANx), 2007 WL 4403985, at *1 (C.D. Cal. Dec. 4, 2007)); *Humphreys & Partners, Architects, L.P. v. George F. Tibsherany, Inc.*, No. CV-03-0169-PHX-SMM, 2006 WL 8440623, at *1 (D. Ariz. Feb. 22, 2006) (“While common questions of law or fact may exist, the Court finds no overriding commonality of either that compels consolidation.”). Consolidation may be inappropriate “[e]ven

1 where claims are *identical* [because] distinct underlying facts may give rise to different defenses
 2 and legal issues” *P.S., et al. v. City of San Fernando, et al. Jonathan Valdivia*, No. CV 21-4918
 3 PA (PVCx), 2022 WL 3016257, at *2 (C.D. Cal. Apr. 11, 2022) (emphasis added).

4 **IV. ARGUMENT**

5 **A. Consolidation Would Be Unfair and Prejudicial to the *Braxton* Class.**

6 Consolidation would be unfair and prejudicial to the *Braxton* class because it would
 7 significantly dilute the *Braxton* plaintiffs’ allegations and materially hamper their claims,
 8 including their ability to obtain class certification. *See Jackson v. City & Cnty. of San Francisco*,
 9 No. C 09-2143 RS, 2010 WL 11582918, at *1 (N.D. Cal. Dec. 16, 2010) (noting that it would be
 10 “unfair” to force a narrower class into a broader class via consolidation).

11 The decision of this District by Judge Seeborg in *Jackson* is instructive. In that case, the
 12 defendant moved to consolidate *Jackson* with a much broader case, *Pizo*, that subsumed *Jackson*,
 13 where the factual and legal overlap was undeniable (and much greater than any overlap here). *Id.*
 14 But the court nevertheless ruled that the defendant “has not made a persuasive showing that any
 15 benefits of consolidation outweigh the burdens” when *Jackson* “likely will be significantly
 16 narrower than *Pizo*.” *Id.* The court further explained that “[i]t would therefore be unfair to
 17 plaintiffs in this action to force them to be involved in an action of a much broader scope than the
 18 one they chose to initiate.” *Id.* Here, Wells Fargo’s motion seeks to do exactly that: force the
 19 *Braxton* plaintiffs into a much broader action than the one they chose to initiate. The *Braxton*
 20 plaintiffs’ decision to allege a narrower class and limit the *Braxton* case to refinancing was not
 21 accidental; the *Braxton* plaintiffs and their counsel view this as their greatest chance of success on
 22 the merits and perhaps their only opportunity to hold Wells Fargo accountable for its racial
 23 discrimination. Accordingly, as in *Jackson*, consolidation would be unfair and would potentially
 24 deprive the *Braxton* plaintiffs of any chance to right the wrongs against them, and should be
 25 denied.

26 Lumping the *Braxton* class into a far broader and varied class will also undermine the
 27 *Braxton* plaintiffs’ ability to certify their class. This is clearly a part of Wells Fargo’s strategy:
 28 force plaintiffs to pursue as broad of a putative class as possible, and then argue against class

1 certification on grounds that individual issues predominate given the breadth of the class and
 2 differing factual circumstances within it. The class Wells Fargo wants to defend against—
 3 essentially a strawman of Wells Fargo’s own design—includes all minorities and involves all
 4 aspects of residential lending. Such a large class will inevitably present more concerns with
 5 respect to commonality, as well as with the adequacy and typicality of the associated class
 6 representatives. Indeed, one of the (many) reasons the *Braxton* plaintiffs filed on behalf of only
 7 Black homeowners discriminated against in the refinancing process was the feasibility of
 8 certification of that targeted class.

9 The *Braxton* class will also be prejudiced by the delays connected to a consolidated matter.
 10 The factual development thus far in *Braxton*—incorporating detailed information from
 11 confidential witnesses that is absent from any of the other pending cases—exceeds the factual
 12 development in other cases Wells Fargo seeks to consolidate. *See supra* Section II.B. Further, the
 13 *Braxton* plaintiffs have already served document requests on Wells Fargo concerning the
 14 refinancing practices and associated underwriting department. Wells Fargo’s response to those
 15 requests will be triggered after the parties’ Rule 26 meet and confer, which Wells Fargo—
 16 consistent with its goal of delaying the *Braxton* case—has refused to join.

17 Wells Fargo should not be allowed to prejudice the *Braxton* Class by diluting the strength
 18 of its claims, by inserting it into a broader class that will be harder to certify, or by delaying its
 19 already considerable progress.

20 **B. Wells Fargo Has Not Shown There Are Efficiencies Outweighing The**
 21 **Prejudice to the *Braxton* Class from Consolidation.**

22 The burden is on Wells Fargo to demonstrate that consolidation will make the prosecution
 23 of all six cases so much more efficient that it will outweigh the prejudice to the plaintiffs of losing
 24 control over the case they filed. *Cook*, 2011 WL 13217794, at *1. Wells Fargo falls far short of
 25 meeting this burden by only offering platitudes about the possibility of easier combined discovery.
 26 When, as here, the “Defendants have not met their burden to show that consolidation would
 27 produce substantial tangible efficiencies warranting the court to *override the Plaintiffs’ autonomy*
 28 *in mastering their own complaints*,” consolidation should be rejected. *Anderson Living Tr. v.*

1 *WPX Energy Prod., LLC*, 297 F.R.D. 622, 631 (D.N.M. 2014) (emphasis added) (explaining that
 2 the efficiencies the moving party claimed would result from consolidation did not outweigh the
 3 plaintiffs’ right to pursue the case that they had initiated and denying consolidation).

4 Even assuming that there could be some efficiencies from combining aspects of these
 5 cases, they are already related and those efficiencies are available without prejudicial
 6 consolidation. This is because “[d]uplicative discovery can be avoided by permitting discovery in
 7 each related action to be used in all related actions.” *Campbell*, 2008 WL 3836972, at *3;
 8 *Anderson Living*, 297 F.R.D. at 631. Likewise, parties in related cases can “coordinate hearing
 9 dates when appropriate, so that motions may be heard on the same day.” *Id.* Thus, “many of the
 10 efficiency gains sought to be achieved by consolidation can also be achieved without
 11 consolidation.” *Id.* The same is true here. Accordingly, Wells Fargo’s assertion that failure to
 12 consolidate will create duplicative and overlapping discovery efforts is false and insufficient to
 13 meet the applicable burden.³

14 C. Common Issues Across the Six Cases Do Not Merit Consolidation.

15 The fact that Wells Fargo has been sued by multiple plaintiffs for various different kinds of
 16 discrimination does not create, as Wells Fargo contends, common issues such that consolidation of
 17 those various cases is required. That Wells Fargo faces multiple lawsuits based on its insidious
 18 and discriminatory practices is a problem of its own making, and the victims of that
 19 discrimination—the plaintiffs in *Braxton* among them—should not be further penalized because of
 20 what Wells Fargo has done by being stripped of their right to prosecute their claims.

21 In order to present the issues here as so “common” that consolidation is required, Wells
 22 Fargo paints the various cases with an extremely broad brush, contending that they all ask
 23 “whether plaintiffs can prove (1) disparate treatment (intentional discrimination) or disparate
 24

25 ³ Because any efficiencies resulting from consolidation can be gained *without* consolidation, there
 26 is also no need for a consolidated master pleading. Wells Fargo boldly claims that the *Braxton*
 27 motion for appointment as interim counsel for a class of Black homeowners discriminated against
 28 with respect to refinancing illustrates the need for a consolidated complaint that eliminates the
Braxton class. Mot. 10-11. This is, simply put, nonsensical. The fact that the *Braxton* plaintiffs
 seek to secure their right to prosecute their own distinct case shows that the *Braxton* suit should
 stand alone.

1 impact (by identifying a facially neutral policy that results in a disparate impact); and (2) that
 2 Wells Fargo intentionally and purposefully discriminated against plaintiffs because of race in
 3 violation of state and federal law when they applied for home mortgage loans and loan
 4 modifications.” Mot. 6. Wells Fargo’s extremely broad descriptions of the issues in the cases
 5 against it do not create the overlap in “key factual issues” Wells Fargo claims they do. While it is
 6 correct that plaintiffs in all of the cases need to prove disparate treatment or disparate impact,
 7 plaintiffs in two of the cases (*Williams* and *Ebo*) will need to prove disparate treatment or impact
 8 against Black Americans concerning *all residential lending*; plaintiffs in two of the other cases
 9 (*Pope* and *Thomas*) must prove disparate treatment or impact across *all racial minorities*
 10 concerning refinancing; and plaintiffs in another case (*Perkins*) must prove disparate treatment or
 11 impact across *all racial minorities* concerning *all residential lending*. The *Braxton* case is the
 12 most refined and targeted. Wells Fargo also repeatedly claims, without support, that its treatment
 13 of origination applications is the same as its treatment of refinancing applications and that the
 14 resulting commonality warrants consolidation, but Wells Fargo’s (untested) assertion is
 15 inconsistent with the *Braxton* plaintiffs’ investigation.

16 Simply put, the fact that Wells Fargo can manufacture an appearance of commonality
 17 among all the cases through generic descriptions of them does not mean the cases must be
 18 consolidated. “The mere existence of common issues, a prerequisite to consolidation, does not
 19 require consolidation.” *Dusky*, 2007 WL 4403985, at *2; *Jackson*, 2010 WL 11582918, at *1
 20 (“consolidation is [not necessarily] appropriate every time there is some common question of law
 21 or fact”). Here, because the actual “key issues” in the various at-issue cases are different, Wells
 22 Fargo’s motion should be denied. *See, e.g., Wright*, 1993 WL 313040, at *1 (denying a motion
 23 for consolidation where “[t]he factual and legal issues raised by [the] actions [we]re similar only
 24 insofar as in both actions plaintiff claims that he was injured due to the negligence of defendant”).
 25 And just as the supposed overlap in “key issues” between the cases is insufficient to merit
 26 consolidation, so too is the overlap between the defined classes. When putative classes asserted in
 27 multiple cases are substantially different, as they are here, consolidation is not appropriate. *Lopez*
 28 *v. Liberty Mut. Ins. Co.*, No. CV1405576BROJCX, 2014 WL 12853283, at *6 (C.D. Cal. Oct. 24,

2014). In *Lopez*, the court denied plenary consolidation of pending class actions because there was “a legitimate concern regarding the scope of the putative classes in each case.” *Id.* The court reasoned that if discovery revealed that the classes were in fact different, then the class actions should not be consolidated. *See id.* (if the classes are “materially distinct” then “it would be prejudicial to Plaintiffs to consolidate these classes”).

The potential classes in *Williams, Braxton, Thomas, Ebo and Perkins* are each different. That is an undisputed fact. In its motion, Wells Fargo implies that because the allegations of discrimination against non-Black applicants in *Pope, Thomas, and Perkins* are “factually unsupported,” those cases are not differently situated than the classes focusing on discrimination against Black applicants. Mot. 11. Wells Fargo does not and cannot cite any authority for the argument that certain factual allegations can simply be ignored or set aside in order to manufacture supposed commonality for the purposes of consolidation. Because there are different class definitions across the six cases, which Wells Fargo cannot explain away, consolidation should be rejected.

D. If The Court Consolidates The Cases, It Should Limit Consolidation to Discovery and Permit The *Braxton* Firms To Move For Class Certification On Behalf Of A Black Refinancing-Only Class.

Finally, should the Court ultimately determine that the cases should be consolidated for any purpose, the Court should limit consolidation to discovery only, grant the *Braxton* plaintiffs’ motion for interim counsel, and permit the *Braxton* plaintiffs to move for class certification on behalf of Black refinancing applicants only. The *Braxton* plaintiffs have demonstrated that their claims are distinct given the repugnant treatment of Black homeowners seeking to refinance their mortgage loans through Wells Fargo. The *Braxton* plaintiffs have already served discovery centered on Wells Fargo’s refinancing practices, including the specific failures in Wells Fargo’s oversight practices. Consolidation or not, the *Braxton* plaintiffs must be permitted to continue prosecuting the distinct case they brought against Wells Fargo.

V. CONCLUSION

For the reasons set forth above, the Court should deny Wells Fargo’s motion to consolidate in its entirety.

1 DATED: August 26, 2022

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ATTORNEY ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

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